

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2614

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74-2614

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellant-Appellee

against

GEON INDUSTRIES, INC., et al.,

GEON INDUSTRIES, INC. and GEORGE O. NEUWITH,

Defendants-Appellants

FRANK BLOOM and EDWARDS & HANLY,

Defendant-Appellees



On Appeal from the United States District
Court for the Southern District of New York

APPENDIX OF APPELLANT SECURITIES AND EXCHANGE COMMISSION

VOLUME II

TRANSCRIPTS

Pages 1 - 218A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 SECURITIES AND EXCHANGE COMMISSION :

5 - vs - :

6 GEON CORP., et al. :

74 CIV 1496

8 -----X
9 Before: HON. DUDLEY B. BONSALE, United States District Judge

10
11 17 June, 1974
12 2:30 p. m.

13 A p p e a r a n c e s :

14 For The Plaintiff: Wallace L. Timmeny, Esq.
15 Michael Drake, Esq.
16 Michael Perlis, Esq.
17 Richard Rubin, Esq.

18 For Defendants Geon, Inc., Neuwirth and Bloom:
19 JAY E. STRUM, ESQ.

20 For Defendant Rauch: Benjamin Zelermyer, Esq.

21 For Defendant Mc Mahon: Mark Berger, Esq.

22 For Defendant Edwards & Hanley: Evan L. Gordon, Esq.

23 - O -
24
25

1 THE CLERK: Securities and Exchange Commission
2 against Geon Corporation, et al.

3 THE COURT: All right, is the plaintiff ready?

4 MR. TIMMENY: Plaintiff is ready, Your Honour.

5 THE COURT: Are the defendants ready?

6 MR. STRUM: Your Honour, we are ready. I had
7 understood that before we started the hearing this after-
8 noon we could be heard on the subject of a letter that
9 was addressed to Your Honour previously?

10 THE COURT: You are Mr. --

11 MR. STRUM: Strum, Your Honour.

12 THE COURT: You are Mr. Strum. I see a long letter
13 here from Mr. Strum. What is the problem? Is this about
14 subpoenas?

15 MR. STRUM: Yes, Your Honour.

16 THE COURT: What is your problem?

17 MR. STRUM: Well, my problem is this: I would like
18 to direct my attention specifically to four subpoenas to
19 which I most strenuously object.

20 THE COURT: Subpoenas of who?

21 MR. STRUM: A subpoena of Joseph G. Connelly, a mem-
22 ber of Kaye Schoeler Fierman Hays and Handler; a subpoena
23 to John A. Friedman, also a member of Kaye Schoeler
24 Fierman Hays and Handler; a subpoena to Louis Korman,
25 an associate of Kaye Schoeler Fierman Hays & Handler;

1
2 and a subpoena duces tecum to defendant Geon Industries,
3 Inc. calling for the production of a large number of
4 documents never heretofore requested or seen by the
5 Securities & Exchange Commission.

6 THE COURT: All right. Now, what does the SEC say
7 about that?

8 MR. TIMMENY: Your Honor, the subpoena addressed
9 to Messrs. Connelly, Friedman and Korman are merely
10 subpoenas to arrange for their presence at the hearing,
11 because we think they have relevant evidence, their
12 testimony would be relevant to the substantive issues
13 of this matter. The subpoena duces tecum is also a
14 trial subpoena and calls for the production of a limited
15 number of documents. I think with adequate specificity
16 to be produced here today. They should also be
17 introduced into evidence during the course of the
18 proceeding.

19 THE COURT: Well, does the subpoena indicate which
20 documents you want?

21 MR. TIMMENY: It does, your Honor. We are not
22 conversant with each and every document by document.
23 We have asked for a class of documents within a very short
24 period of time.

25 THE COURT: Well now, the only other purpose of these

other subpoenas is you may want to have these gentlemen available to testify; is that right?

MR. TIMMENY: That's right.

THE COURT: Is there any other problem about that?

MR. STRUM: Yes, there is, your Honor.

THE COURT: What is it?

MR. STRUM: The SEC made a motion for preliminary injunction --

THE COURT: I know they have. That is what I am here for.

MR. STRUM: On May 17th. And I interpret the making of a motion for preliminary injunction as a statement by the SEC that they have evidence which they believe will --

THE COURT: Oh, no, no. I don't follow that. All they say is they may want to ask some questions of the gentlemen, and I take it that is the thrust of it, and it seems to me a minor matter. I won't ask these fellows to be in the courtroom, but I think if they could be around, they are at Kaye Schoeler; is that right?

MR. STRUM: Well, there is no problem with the physical availability.

THE COURT: I didn't think so. So, if the SEC

1 cmsr

5

2 wants them to come down, we can work that out. There
3 is no jury here, there won't be any problem. We will
4 have them come down. And they may not want them to,
5 I don't know. So, just tell them not to worry about it,
6 and if the SEC wants them, they will get a little notice
7 to come on down here and they will ask them some
8 questions.

9 Is that fair enough?

10 MR. STRUM: Well, I would like to address myself
11 to one more point preliminarily, your Honor. I was told
12 last week that when we arrived in court today certain
13 transcripts of testimony taken at The American Stock
14 Exchange of various witnesses would be given to us so
15 we could duplicate them overnight and have them available.

16 THE COURT: Who was going to give it to you?

17 MR. STRUM: The SEC. We asked for them upon their
18 arrival in court and they told us we can't have them.

19 THE COURT: This was testimony taken at The American
20 Stock Exchange?

21 MR. STRUM: That is correct, your Honor.

22 THE COURT: What about that?

23 MR. STRUM: I was told I could have -- first when
24 we thought that the hearing would be this morning I was
25 told I could have it this morning. Now I was --

1
2 THE COURT: Well, wait. What about the testimony
3 at The American Stock Exchange?

4 MR. TIMMENY: Your Honor, our approach to the
5 matter would be to turn over the testimony to the
6 defendants for copying this afternoon when they turn
7 over the matters that we are entitled to pursuant to
8 our subpoena. We thought we might work it out on that
9 basis.

10 THE COURT: I am sure you are going to work it
11 out. I will see that it is worked out. You ought to
12 have a chance to look at that testimony, and they say
13 they are going to give it to you, and there seems to be
14 a failure of communication which so often happens in
15 these cases. Why don't you work it out with counsel
16 this afternoon we reach that?

17 I would like to get started on this thing and work
18 it out. If you have any trouble, let me know.

19 MR. TIMMENY: Well, your Honor, we will turn it
20 over at the conclusion of the hearing today.

21 MR. GORDON: If your Honor please, I'm with the
22 firm of Delson & Gordon, attorneys for Edwards & Hanley,
23 and I, too, have an application to make to the Court.

24 I forwarded a letter to the Court in which I
25 indicated to them that the Securities & Exchange

1
2 Commission had served certain subpoenas on our client
3 which seek to go far beyond the issues presented to
4 The Court either in the complaint or on the motion
5 papers for preliminary injunction.

6 By way of illustration, your Honor, they served
7 the subpoena on our "Chief Margin Clerk" asking him for
8 -- and I have the attachment -- any and all documents
9 in your possession or control pertaining to the margin
10 accounts of James McMahon and Louis Maione, including
11 any and all materials sent in accordance with Federal
12 Truth in Lending Regulations, and the date that such
13 items were sent from August 1, 1973 through April 1,
14 1974.

15 If your Honor please, this is an afterthought on
16 the Commission's part. In the conversation I was having
17 with them the other day discussing the nature of the
18 testimony to be given they said, by the way, did your
19 client comply with the Federal Truth in Lending Law in
20 connection with these transactions? Maybe we had better
21 find out.

22 Next thing I know I had a call from my client that
23 there is someone walking around down our principal office
24 with a subpoena for their records on the Federal Truth
25 in Lending Law.

1
2 This is another example of the same kind of thing
3 going on here, they subpoenaed a cashier by the name
4 of Mrs. Hauser, they want Mrs. Hauser to give testimony
5 as to whether there was anything wrong in connection
6 with a certain infusion of cash into one of the accounts
7 at issue here. Not the fact that there is or there
8 isn't, but whether there is. Whether it was unusual.

9 Now, if your Honor please, I object to this. They
10 have also subpoenaed all our order tickets on these
11 transactions. I asked them, what do you want order
12 tickets for? They said, we want them to see if they
13 are signed. I said, what difference does that make?
14 I still don't know what difference it makes, but they
15 have now subpoenaed all these documents and I object.

16 THE COURT: All right. What about that?

17 MR. TIMMENY: Well, your Honor, I think that as
18 to the documents and Mrs. Hauser's testimony, the Court
19 can rule on the relevancy of those matters when they
20 are offered into evidence by the plaintiff. Insofar
21 as the truth in lending provisions, I think that that
22 is relevant, again I think the Court can rule on
23 relevancy if and when we enter it.

24 THE COURT: I think I can as time goes on. What
25 I think you are worried about is a lot of these people

1
2 don't know where they stand; is that right?

3 MR. GORDON: Pardon me, your Honor? I didn't
4 hear the Court.

5 THE COURT: Well, let's let it go, then.. When these
6 things come up you bring it to my attention.

7 MR. GORDON: All right, your Honor.

8 MR. ZELERMYER: If your Honor please, I represent
9 the defendant Marvin Rauch. Defendant Rauch at this
10 time wishes to advise the Court that he wishes to
11 consent to the entry of a permanent injunction embodying
12 the relief sought in the complaint.

13 THE COURT: All right.

14 MR. TIMMENY: Your Honor, I would like to be heard
15 on that, if you please. We would not join with Mr.
16 Rauch in presenting a consent to the Court. It is our
17 position that Mr. Rauch, if he consents, would have to
18 consent on the basis of findings by the Court to
19 violations.

20 In other words, we will not enter into a usual
21 consent with him to the effect that we waive findings
22 and let him consent without admitting or denying the
23 allegations.

24 THE COURT: Well, that again is another of these
25 practical matters. I am glad to have heard from Mr.

Zelermeyer on that, and when the time comes all I know now is that he is agreeable to the entry of a preliminary injunction against him.

MR. ZELERMEYER: That is correct, your Honor.

THE COURT: And the details of that we can work out. Does that mean that you don't intend to participate at this hearing?

MR. ZELERMEYER: That is exactly right, your Honor.

THE COURT: All right. Well, I don't blame you.

MR. TIMMENY: That raises a problem, your Honor. We think that Mr. Rauch, unless he consents on the basis of findings --

THE COURT: Well, we can get the findings.

MR. TIMMENY: But we need him here, your Honor, as a party because we want to put through evidence into the case through Mr. Rauch.

THE COURT: All right.

MR. ZELERMEYER: Well, I think, your Honor, you ought to be aware of --

THE COURT: Well, that is right, he will be here as a party, and, is Mr. Rauch here now?

MR. ZELERMEYER: Mr. Rauch is here, your Honor.

THE COURT: Well you had better stay with him because the Government wants to put him on the stand.

1
2 MR. TIMMENY: May I make this suggestion, your
3 Honor --

4 THE COURT: What?

5 MR. TIMMENY: If Mr. Rauch consents, if the Court
6 could accept his consent on condition that for evidentiary
7 purposes he would be considered a party, then I think
8 we could join in the consent.

9 THE COURT: All right. Well, I would think he is
10 a party, isn't he?

11 MR. TIMMENY: I think he could be treated that way,
12 your Honor, yes.

13 THE COURT: He is one of the defendants here.

14 MR. ZELERMYER: He is a named defendant, your Honor.

15 THE COURT: He is a named defendant, and you are
16 asking for a preliminary injunction, and I suppose you
17 filed a complaint and named him as a defendant, I suppose
18 he is a party all right.

19 MR. TIMMENY: And remains a party after the consent --

20 THE COURT: Yes. But the point is, are you planning
21 to call Mr. Rauch? When are you going to call him?

22 MR. TIMMENY: We would call him, your Honor, on
23 our direct case.

24 THE COURT: Well, when?

25 MR. TIMMENY: The fourth or fifth witness, your Honor.

I presume that would be sometime tomorrow.

THE COURT: Do you need him today?

MR. TIMMENY: No, your Honor.

MR. ZELERMYER: Perhaps I can save us all some time, because I had advised Mr. Perlis, Mr. Rubin and Mr. Drake last week, I advised them that I intended to counsel Mr. Rauch if called as a witness by the SEC in this proceeding to invoke his privilege against self-incrimination, and I think the Court ought to be aware of that at this time.

THE COURT: All right.

MR. ZELERMYER: Now, if we can save everyone's time --

THE COURT: I am aware if the SEC wants to call him I will have to rule on that at the time, and all I know is the SEC won't reach him this afternoon.

MR. ZELERMYER: Mr. Rauch is trying very hard to earn a living, your Honor. He is here today, and since there is no jury I thought we might be able to put him on today and establish that he will do in fact what I have counseled him to do.

THE COURT: Well, I think we had better do it when the SEC gets ready to call him. All right.

MR. TIMMENY: Your Honor, one further point on

1
2 behalf of plaintiff. I would to make an application
3 to quash a subpoena served on.

4 THE COURT: Why do we get into all this morass of
5 preliminary nonsense? I am here to hear this case.
6 I have got a heavy calendar and I don't want to get
7 into all this business about quashing subpoenas. Can't
8 we move along?

9 MR. TIMMENY: Yes, your HONOR. We are prepared
10 to move along.

11 THE COURT: Who is this gentleman?

12 MR. BERGER: Your Honor, my name is Mark Berger,
13 I am the attorney for one of the other defendants, Mr.
14 McMahon, who consented to a permanent injunction, and
15 I would like very much to be excused and to have my
16 client excused. I don't think the SEC will have objection
17 to that.

18 THE COURT: Do you have any objection to that?

19 MR. TIMMENY: No objection, your Honor, as long
20 as he is considered a party on the same basis --

21 THE COURT: Oh, yes.

22 MR. TIMMENY: One further point with regard to
23 Mr. McMahon, your Honor. Mr. Berger has tendered to
24 us a proposed consent injunction. We have some problems
25 with the language. We would like to review that before --

1
2 THE COURT: All right, that's fine. I would like
3 you to review it, too.

4 MR. BERGER: Yes, sir.

5 THE COURT: All right. We will take care of that
6 when it comes along.

7 MR. TIMMENY: Will we be able to speak to that
8 first thing in the morning, your Honor?

9 THE COURT: That's right. Why don't you do it
10 first thing in the morning? I have to finish up that
11 criminal case in the morning, so you will have a good
12 opportunity to review it together.

13 MR. BERGER: Will it be necessary to have my
14 client here tomorrow, your Honor? He comes a hundred
15 miles from South Hampton.

16 THE COURT: South Hampton?

17 MR. BERGER: Yes, sir.

18 THE COURT: Do you want him here?

19 MR. TIMMENY: Well, your Honor, if the consent
20 doesn't work out we are going to need him.

21 MR. BERGER: I don't think there is any question --

22 THE COURT: Well, why don't you bring him up here?
23 It's raining in South Hampton.

24 MR. TIMMENY: Our position is we are going to
25 have to have him here until we work this thing out.

1
2 THE COURT: All right.

3 MR. ZELERMYER: May I also be excused on the same
4 basis?

5 THE COURT: Yes, but I want you here with your
6 client when they call him.

7 MR. ZELERMYER: What time is your HONOR going to
8 convene tomorrow?

9 THE COURT: I am starting this criminal case at
10 9:30, and I expect to give the case to the jury at
11 eleven o'clock.

12 MR. ZELERMYER: Shall I be here at eleven o'clock?

13 THE COURT: Yes. With Mr. Rauch.

14 MR. ZELERMYER: Yes, sir.

15 MR. TIMMENY: Your Honor, the defendants Roy Alpert
16 and Irving Alpert have also tendered consent to the
17 Court. We will tender them to the Court on their behalf.

18 THE COURT: All right. Now, in looking at the
19 mastheads that leaves Geon Industries Neuwirth, Bloom,
20 Edwards & Hanley; is that right?

21 MR. TIMMENY: That's correct, your Honor.

22 THE COURT: All right. Go ahead.

23 MR. TIMMENY: If it please the Court, we are
24 prepared to resume with a brief opening statement or
25 to start with the witness.

1
2 THE COURT: I think I know what the case is about,
3 and I guess the other lawyers know what the case is
4 about. Why don't you start by calling a witness.

5 MR. TIMMENY: Very well, your Honor. We will
6 call as our first witness Mr. Frank Bloom.

7 THE COURT: This is the same Mr. Bloom who is a
8 defendant?

9 MR. TIMMENY: Yes, sir.

10 F R A N K B L O O M , called as a witness in
11 behalf of the plaintiff, being first duly sworn
12 by the Clerk of the Court, testified as follows:

13 MR. TIMMENY: Your Honor, at this time I would
14 like to request that any other witnesses that are in the
15 room be sequestered.

16 THE COURT: Is anybody out there going to testify
17 in this case that have been subpoenaed or called on to
18 testify in this case?

19 MR. GORDON: Your Honor, the senior partner of
20 Edwards & Hanley is here, I would like him to remain as
21 a representative of the parties. He will be a witness
22 at this trial.

23 THE COURT: How about that? I wouldn't see any
24 problem on it.

25 MR. TIMMENY: I have no objection, your Honor.

1
2 THE COURT: Now, how about this other gentleman
3 over here?

4 MR. STRUM: Your Honor, Mr. George Neuwirth is
5 also a party, and he will also be a witness, and I think
6 he should equally be permitted to stay.

7 THE COURT: All right.

8 DIRECT EXAMINATION

9 BY MR. TIMMENY:

10 Q Mr. Bloom, would you state your full name for
11 the record, please?

12 A Frank Bloom.

13 Q What is your occupation, Mr. Bloom?

14 A I am financial vice president of Geon Industries,
15 Inc.

16 Q How long have you been affiliated with Geon
17 Industries, Inc.?

18 A Since April 1969.

19 Q What posts have you held since April 1969 with
20 Geon?

21 A Controller, treasurer, secretary.

22 THE COURT: Let me know something. What does
23 Geon Industries do?

24 THE WITNESS: Our principal business is the
25 importation and distribution of foreign car replacement

parts.

THE COURT: Importation and distribution of foreign car replacement parts.

THE WITNESS: Yes, sir. And in addition we have two export operations that export automotive replacement parts and aviation replacement parts.

THE COURT: All right.

BY MR. TIMMENY:

Q Would you describe to the Court the location of your business, Mr. Bloom?

A Yes; we have two major locations in Woodbury, New York, one at 80 Crossways Park and the other one at 101 Crossways Park.

In addition, we have another major location in Compton, California, and another in Manhattan, and approximately 103 or 104 company-owned distributor locations throughout the United States.

In addition to that, we have an export company that exports from Germany to the United States located in Hamburg, Germany.

THE COURT: What is that?

THE WITNESS: That's also automotive replacement parts --

THE COURT: No, what is the name of the company?

THE WITNESS: It's a long name. Geon Export
Parts, G. M. B. H.

THE COURT: It is a GMBH?

THE WITNESS: Yes.

THE COURT: Your distributors around the country,
how many do you have?

THE WITNESS: In excess of 104.

THE COURT: And they are in effect local
distributors for foreign automobile parts being distributed
in their particular districts; is that right?

THE WITNESS: That's right.

THE COURT: All right.

BY MR. TIMMENY:

Q Mr. Bloom, are you a stockholder of Geon
Industries?

A Yes, I am.

Q Approximately how many shares do you hold?

A I have 2,250 shares.

Q How long have you owned those 2,000 shares?

A Since sometime in 1972.

Q Have your holdings since 1972 been more or less
constant around 2,000 shares?

A They have been exactly constant. Those were
shares that I purchased on exercise of qualified stock

options.

THE COURT: Is the stock listed?

THE WITNESS: Yes, sir, on The American Stock Exchange.

Q Mr. Bloom, inviting your attention now to the proposed acquisition of Geon by Burmah Oil Company --

THE COURT: How do you spell that? Burmah Oil.

MR. TIMMENY: B-u-r-m-a-h.

Q Approximately when did discussions begin concerning this acquisition?

A The first contact with Geon was made in the Summer of 1973. Approximately in July.

THE COURT: How did that contact come about?

THE WITNESS: The contact was made to the president of the company, Peter Neuwirth, by a representative of Drexel-Burnham & Co. in California.

Q Who was handling the negotiations for Geon?

A The actual negotiations for the acquisition?

MR. STRUM: I object, your Honor.

THE COURT: On what ground?

MR. STRUM: Well, I am a bit confused. Mr. Timmeny's prior question asked Mr. Bloom about discussion, now he asking about negotiations. I would request --

THE COURT: Yes, I agree it is a little confusing.

I would like Mr. Bloom to tell us, he can do that, as I understand you were approached through Drexel-Burnham in California?

THE WITNESS: Yes, your Honor.

THE COURT: Who was approached?

THE WITNESS: Peter Neuwirth.

THE COURT: Mr. Neuwirth was approached. All right, take it from there.

Q What happened after Neuwirth was approached by Drexel-Burnham?

A Well, there were some subsequent meetings -- there was a meeting at Drexel-Burnham and Co. --

THE COURT: In California?

THE WITNESS: No, sir, that was done in New York.

THE COURT: In the New York office?

THE WITNESS: Yes, sir.

Q When did that take place, sir?

A Approximately August of 1973.

Q Who was in attendance at that meeting?

A Myself, George Neuwirth, the chairman of the board, Peter Neuwirth --

THE COURT: Who is Peter Neuwirth?

THE WITNESS: He is the president of the company.

THE COURT: Are they brothers?

1
2 THE WITNESS: No, he is George Neuwirth's son.

3 THE COURT: Son. George is chairman and Peter
4 is president; is that right?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right.

7 A (continuing) And one or two representatives
8 of Drexel-Burnham and Co., I'm not certain, and three
9 individuals from -- I'm sorry, two individuals from
10 Burmah Oil and one individual from --

11 THE COURT: Who were the people from Burmah
12 Oil?

13 THE WITNESS: A gentleman by the name of Max
14 Roberts, who is the president of Burmah Oil, U.S.A., and
15 another gentleman by the name of Campbell Anderson, who
16 was the manager of corporate development, U.S.A., and
17 another gentleman from the Castrol Oil Products Division,
18 the president of the Castrol Oil Products Division in the
19 United States, Martin Donohue.

20 Q What took place at this meeting, Mr. Bloom?
21 Just generally.

22 A Well, at that meeting -- we were informed by the
23 people at Drexel-Burnham & Company that we were meeting
24 with representatives of Castrol. We were not under the
25 impression that we were meeting with anybody directly from

the Burmah organization.

THE COURT: You say Castor Oil?

THE WITNESS: Castrol, yes, sir, it's a division of Burmah's in the U. S.

THE COURT: All right.

A And as a matter of fact, at the inception of that meeting we did not even exchange business cards, because the people who were there representing Burmah --

THE COURT: Well, don't tell us, just tell us you didn't exchange business cards. I think that's enough. All right.

Q What came out of the meeting?

A Well, it was about I guess a half hour meeting and they asked us some very general questions about the business.

THE COURT: They, do you remember who "they" were? The Burmah people?

THE WITNESS: Yes, sir.

THE COURT: They asked you general questions about the business?

THE WITNESS: Yes, sir. And what we felt prospects for the business were like, what we felt the future for the industry in the replacement parts business in the United States was, and some very general questions

about people active in the company.

When we closed -- oh, and then they indicated to us that they might have some possible interest in the company. Although at that point they knew very little about Geon. And we closed the meeting with the people from Burmah disclosing to us that they were from Burmah, and we established a contact man at Drexel-Burnham, a fellow by the name of David Gavrin, and David Gavrin acted as the liaison between the Burmah people and Geon, and principally myself at that point in time, because we established that they would request certain information from us about the company that we would try to provide them with.

THE COURT: I didn't get that. This fellow David Gavrin, where does he work?

THE WITNESS: He is with the corporate finance department of Drexel-Burnham & Company.

THE COURT: He is at Drexel-Burnham.

THE WITNESS: Yes, sir.

THE COURT: All right.

Q What took place at the conclusion of the meeting? Did you arrange to have another meeting?

A No, not at that time. At that point in time, and in fact for some time subsequent, Burmah had relatively

1 little information about Geon as a company. What we
2 did was to establish David Gavrin as the liaison man,
3 and we would try to provide them with information, such
4 as analysts' reports that have been written about the
5 company over the last year or two, any other information
6 on the industry.
7

8 THE COURT: Was this at his request, or did
9 you just supply them with this information?

10 THE WITNESS: No, this was at his request, your
11 Honor.

12 THE COURT: He would request information; is that
13 the picture?

14 THE WITNESS: That's correct.

15 THE COURT: Then you made it available for him.

16 THE WITNESS: Yes, sir.

17 BY MR. TIMMENY:

18 Q What were the mechanics of making the information
19 available to him? Did you mail the information to him?

20 A I mailed the information to him, yes.

21 Q Did you have discussions with him on the telephone?

22 A With Gavrin?

23 Q Yes.

24 A Yes, I did.

25 Q When did you next decide, or, was there another

meeting of any kind? Did you have further discussions with Burmah?

A Yes. Things had progressed rather slowly because all we were doing was feeding them some information.

At the same time, they asked us for a --

THE COURT: Who is "they"? Burmah?

THE WITNESS: Burmah, yes, via Drexel-Burham, asked us for a management forecast on what we thought we would do in the industry, and what the industry was doing generally and some projections done on a, strictly a straight line basis for them. And --

Q Excuse me. What kind of projections were these?

A These were projections of pro forma income statements and balance sheets, just assuming a mathematical growth rate, like a 20% a year growth rate or a 25% a year growth rate.

THE COURT: How long a projection did they ask for?

THE WITNESS: Five years.

THE COURT: A five-year projection.

THE WITNESS: Yes, sir.

A (continuing) And the accompanying cash flow statement as part of that projection.

Q Can you put this transmittal of information into

1 some kind of a time frame? What time are we talking about?

2 A I would say by the third week of August they
3 had a considerable portion of that information.

4 THE COURT: This happened pretty quickly after
5 this meeting that took place in August also?

6 THE WITNESS: Yes, sir.

7 THE COURT: You set up a liaison and you were
8 feeding them this material?

9 THE WITNESS: Yes, sir.

10 Q What, if anything, happened after this third
11 week of August when you transmitted the information to
12 Mr. Gavrin?

13 A Then, and I don't remember the date of the
14 next meeting, there was another meeting which was arranged
15 by David Gavrin at, I think at the Harvard Club, and
16 the people present were David, both Mr. George Neuwirth
17 and Mr. Peter Neuwirth, myself, Michael Fisciotta --

18 THE COURT: Who is he?

19 THE WITNESS: Who is another officer of Geon
20 Industries, a vice president, Max Roberts again, Campbell
21 Anderson and a fellow by the name of Jim Keane who is
22 with Burmah U. S.

23 THE COURT: About when was this meeting at the
24 Harvard Club?
25

1
2 THE WITNESS: I would say -- I don't recall.
3 It would have to have been --

4 THE COURT: Still in August?

5 THE WITNESS: Either late August or early
6 September.

7 THE COURT: Before Labor Day?

8 THE WITNESS: I don't recall, your Honor.

9 THE COURT: You don't recall. All right.

10 Q Would you tell us what took place at this
11 meeting?

12 A This was really a social gathering. I think
13 perhaps just to -- I think perhaps it was David Gavrin's
14 idea, because nothing much had been happening at that
15 point in time, and I think it was just sort of a get
16 together and, you know, meet each other again and see that
17 things are going. We had very little direct contact if
18 any, with the people at Burmah during that time span.

19 The only one that I spoke to there was Campbell
20 Anderson, and that was basically just to directly touch
21 base on some of the things he wanted to see in this
22 management report that we prepared for him.

23 Q What things did you discuss in the management
24 report that had been prepared?

25 A What did we discuss?

1
2 Q Yes, with regard to the management report.

3 A Okay. We discussed where we thought the
4 industry was heading; we discussed two new programs that
5 the company was embarking on, different marketing
6 approaches.

7 Q What sort of new programs were they?

8 A Two programs. One that's called Elan, and
9 another one called Ultra. They are basically sales
10 programs for different segments of the replacement parts
11 market.

12 Q What else were you discussing in the management
13 report?

14 A We discussed where we felt growth in the industry
15 would come from, mainly out in the distributor area,
16 and we embodied some statistics in there based upon
17 foreign vehicles in usage, vehicle populations, those
18 entering our segment of the market because we service
19 a particular span in the life of a vehicle.

20 Q What, if anything, was said about Geon's
21 earnings or projected earnings?

22 A That wasn't part of that pro forma. We gave
23 them a pro forma income statement sometime in, again I
24 would guess about September, but it might have been as
25 late as early October. That I am not certain of either.

1 cmsr

Bloom - direct

30

2 Again, based upon straight line assumptions showing a
3 pro forma income statement and balance sheet for the year
4 1973.

5 Q Would you explain what you mean by straight
6 line assumptions?

7 A Well, we used an average gross profit on the
8 income statement, we used average monthly overhead, and
9 we used an estimated sales figure based upon what our
10 average sales had been and what we felt the effect on
11 monthly sales would be for the balance of the year.

12 Q Returning now to this meeting at the Harvard
13 Club, what else happened other than discussion of the
14 management report?

15 A There wasn't a great deal that happened other
16 than social amenities. It was a lot of, I call it back
17 slapping and glad handing to a great degree. Max Roberts,
18 if you know him personally, is very -- a congenial type
19 and Mr. Neuwirth is a very congenial type, and it was a
20 very pleasant dinner-type discussion.

21 It wasn't a very, very long dinner at all. I
22 met Jim Keane -- excuse me -- who was a financial man at
23 Burmah at that point in time, and in fact they talked to
24 us a little bit about the oil business and their tanker
25 operations, which is something that's totally alien to us.

1
2 Q What next transpired after the meeting at the
3 Harvard Club concerning discussion of the proposed
4 acquisition?

5 A Okay. Some time in October -- let me wait a
6 second, I want to be --

7 Q Let me backtrack a second.

8 You indicated a minute ago that you provided
9 some financial information in September sometime.

10 A You mean the projection?

11 Q The projection. How was that information
12 transmitted to Burmah?

13 A Oh, I just sent them out a pro forma balance
14 sheet and P & L . You're talking about the management
15 report?

16 Q Well, unless I am confused, you said the
17 management report did not have financial figures. You
18 said it --

19 A It had only projections in it, that's correct.

20 Q Now, you have a separate financial report.

21 A Right.

22 Q Which you call a pro forma, in effect, pro forma
23 financial statement that you sent sometime in September.

24 Now, I gather this is separate from the
25 management report?

1
2 A That's correct.

3 Q How did you transmit this information?

4 A The set of pro forma statements I sent out to
5 the people at Burmah.

6 Q Did you have discussions with anybody at Burmah
7 concerning these statements?

8 A Nothing very substantial, I don't think, other
9 than that which we expected to do for the year. That
10 was our forecast.

11 Q May I ask who prepared those statements?

12 A They were done by my accounting department
13 under my instruction.

14 Q Who in the accounting department?

15 A Oh, I don't know. It could have been a joint
16 project, or any one of three different people.

17 Q Who would those three people --

18 A The three people could only have been James
19 McMahon, Stanley Chin or James McCormack.

20 Q Now, as of the conclusion of the meeting at
21 the Harvard Club, would you tell us what, if anything,
22 was said by the Burmah people with respect to expressions
23 of interest in going forward with the acquisition?

24 MR. STRUM: I object to the question, your Honor.
25 There has been no testimony about the acquisition, and to

1
2 the extent that the question is phrased about going ahead
3 with the acquisition I think it is --

4 THE COURT: Well, yes, I think I will sustain
5 the objection to that. But going ahead with these
6 negotiations you have been describing. All right.

7 MR. STRUM: Your Honor, I would just say on that
8 point, as I understand it --

9 THE COURT: He is going ahead. That's all right.
10 I have sustained your objection.

11 Go ahead with the negotiations. What happened
12 after that?

13 THE WITNESS: Well, sometime in October, and
14 again I would guess mid to late October, the people at
15 Burmah indicated to us that they had some preliminary
16 interest in the company and that they would be interested
17 in pursuing their investigations further to actually delve
18 into our operations and see what we look like on the
19 inside.

20 THE COURT: How did you find that out?

21 THE WITNESS: That was expressed to us either
22 directly or --

23 THE COURT: Through Mr. Gavrin?

24 THE WITNESS: Yes, sir.

25 THE COURT: You don't remember which?

THE WITNESS: No, I wouldn't.

Q Now, this was in late October?

A I would guess --

THE COURT: He said middle or late October.

All right.

A I'm very bad on time reference.

Q All right, and what, if anything, happened after that?

A Well, at that point in time I said that I had -- I had a discussion with Peter and George Neuwirth, and I indicated -- may I backtrack a second?

Q Please do.

A All right. Up until this point in time the total company contact was with two individuals here in the United States, Max Roberts, who I named before, and Campbell Anderson who I named before. Now, they had indicated to us in discussions that, before, that they were here -- and telling us about Burmah, that they were here on a tour of duty, so to speak, in the United States. Neither one of them are permanent residents of the United States. And when we were at this point in October where they said that they were interested in really taking a look at Geon, at that point in time and finding out if the company interested them, we had

1
2 some discussion and I said to Peter and George Neuwirth
3 that, here we are, we have talked to two individuals
4 and we are interested in letting them take a look at us,
5 but we haven't taken a look at Burmah. All we had in
6 our possession as far as concrete information about
7 Burmah and their operations was their 1972 annual report
8 and one or two recent Standard & Poor's on the company.

9 So, George Neuwirth was going to be in London,
10 England, and I think Peter had to be there about the same
11 time --

12 THE COURT: What time was this?

13 THE WITNESS: Late October. Around the 26th,
14 your Honor.

15 THE COURT: Late October?

16 THE WITNESS: Yes, sir.

17 A (continuing) And that was for the auto show.
18 There is the Earl's Court Auto Show in England at that
19 time. And I suggested that it might be a good idea
20 if we went and met some of the people at Burmah's head
21 offices and find out just what kind of company they were.

22 THE COURT: They went to the auto show, the two
23 Neuwirths?

24 THE WITNESS: Yes, sir. Well, Mr. George
25 Neuwirth went ahead and Peter and I joined him there.

1
2 A (continuing) Now, just about that same point
3 in time there's another very large U.K. based company
4 who happens to be a substantial supplier of ours here
5 in the United States, the company name is Joseph Lucas.
6 Joseph Lucas, through one of their representatives here
7 in the United States, plus a fellow who is the -- I'm
8 not sure of his title, he's a managing director with the
9 company, but his basic duties involve their corporate
10 development and expansion, a fellow by the name of Graham
11 Roberts, they were here in the United States and they
12 came to see us, and to summarize a luncheon meeting,
13 they indicated that they were, of course, very familiar
14 with Gen and that they were interested in the company,
15 quite interested in the company. That they had been
16 aggressive in other areas of the world in forming either
17 joint ventures or in making acquisitions in the field,
18 replacement parts field, and that they would very much
19 be interested in talking to us.

20 At that point in time we said to them, well,
21 you are interesting to us, also, but we are really not
22 in a position to talk about anything now because we have
23 had some discussions with another company, a very
24 substantial company, and we felt that we would not want
25 to be in the position of talking to two people at the same

1
2 time, nor would we ever at any point down the road try
3 to pit two companies against each other.

4 In any event, they indicated that they would
5 still like to see us when we came to England. And, as
6 a matter of fact, when we went to England and met with
7 the Burmah people at Swindon on that same trip we met
8 with the people from Joseph Lucas in London.

9 Q What, if anything, was discussed at the offices
10 of Burmah in London?

11 THE COURT: I thought you said Burmah was
12 in Swindon and Lucas was in --

13 MR. TIMMENY: I am interested in what happened
14 at Burmah.

15 A At the meeting at Burmah's offices, there were
16 present George Neuwirth, Peter Neuwirth and myself, Peter
17 Simonis, who is assistant managing director, a fellow by
18 the name of Bill Gage, who is their chief financial man,
19 and two or three other individuals whose names I just
20 don't recall.

21 THE COURT: Do you remember the date of this?

22 THE WITNESS: That would be around October 20th,
23 your Honor. I'm not sure.

24 THE COURT: Around October 26th.

25 THE WITNESS: Yes, sir.

1
2 Q Now, would you tell us the essence of the
3 discussions that you had with the Burmah representatives?

4 A Yes. We talked with them -- the whole meeting,
5 by the way, including lunch, lasted about, I'd say about
6 two and a half hours, something like that.

7 Q Is that the only time you spent with Burmah
8 officials while you were in England?

9 A That's correct. The essence of the meeting
10 was really to meet Peter Simonis and sort of look at him,
11 see what he was like and let him take a look and see
12 what we were like.

13 THE COURT: Where is Swindon in relation to
14 London?

15 THE WITNESS: It's about 80 miles, I think,
16 west of London, your Honor.

17 THE COURT: 80 miles west?

18 THE WITNESS: Yes, sir.

19 A (continuing) And basically -- because we had
20 expressed to them openly that we were interested in seeing
21 something about Burmah, to see what Burmah was like.
22 And we sat in Peter Simonis' office and he explained to
23 us somewhat about the evolution of Burmah, because the
24 character of the company had changed considerably over
25 let's say, the preceding five years. They were becoming

1
2 a much more aggressive commercial company. And from
3 being basically an oil exploration and development company.
4

5 We also met the fellow who is the managing
6 director of a wholly-owned subsidiary of theirs in the
7 U.K., that they acquired about a year before that,
8 Quinton-Hazell, a fellow by the name of Jeffrey Gilks.

9 They explained to us the operating of the
10 company. My major discussions, after some pleasantries
11 with Peter Simonis, were with Bill Gage, who is, as I
12 mentioned before, the chief financial man, and what I
13 was interested in was something that they used -- I didn't
14 know the name for it then, but it was a management control
15 tool they used for their companies around the world,
16 and basically how they operated with their companies.

17 Did they let their companies operate on a
18 relatively independent basis or were they very much
19 concerned with central management. And, as I found out
20 very readily at that meeting, they were not interested
21 in centralized management, they operated very much on a
22 de-centralized basis.

23 Q If I might cut you off for just a second, what
24 developed at this meeting with respect to future
25 discussions?

A If I recall, at this meeting they indicated that

1 they were interested in Geon based upon the preliminary
2 information that they had seen, and that at this point
3 in time they would like to send people out from their
4 operating divisions and actually take a look at the
5 company from the inside, meet management people, meet
6 middle management people.
7

8 Q All right. Now, did something happen as a result
9 of their desire to meet your people?

10 A Yes. When we came back to the United States,
11 sometime subsequent to that, they made arrangements for
12 two individuals from Quinton-Hazell, this U. K. subsidiary
13 that I mentioned that they had acquired about a year and
14 a half before, who happens to be a Geon supplier. They
15 sent out two individuals from there, Jeffrey Gilks who was
16 their manager and chief financial man --

17 THE COURT: How do you spell Gilks?

18 THE WITNESS: G-i-l-k-s, your Honor.

19 THE COURT: Who was the other one?

20 THE WITNESS: A fellow who was a marketing man
21 of theirs, Graham Roberts.

22 MR. STRUM: May I ask Mr. Timmeny to put his
23 questions a little bit louder, your Honor? I'm having
24 a little difficulty hearing him.

25 THE COURT: Yes.

MR. TIMMENY: I will do the best I can, Mr. Strum.

Q Mr. Bloom, did Mr. Gilks and Mr. Roberts come over to the U. S.?

A Yes, they did.

Q When did they come?

A They came sometime in early or mid-November.

Q Were there any meetings or any discussions with any Burmah people after the Swinbourne, or after the --

THE COURT: Swindon.

Q (continuing) And prior to the time Mr. Gilks and Mr. Roberts came over?

A I'm not certain. That I wouldn't know. There might have been a phone contact or two, but --

THE COURT: You don't remember?

THE WITNESS: No, sir.

THE COURT: All right.

Q When was the next meeting, or phone contact after Mr. Gilks and Mr. Roberts came over?

A After they came over?

Q Yes.

A We had some -- after they returned to the U.K.

THE COURT: No, wait a minute. They came over to the United States in the middle or the end of November; is that right?

1
2 THE WITNESS: Yes, sir.

3 THE COURT: What happened when they came over?

4 THE WITNESS: They came to the East Coast first,
5 and in fact they were out at my house, I think they
6 arrived on a weekend day, they were out at my house for
7 a full Saturday or a full Sunday. I spent that day with
8 them, and then they spent the next few days at our
9 Woodbury location talking with myself, Peter Neuwirth,
10 Michael Pisciotta, and then from there went out -- that
11 may have taken the entire next week, or a good portion
12 of it.

13 From there they went out with Peter Neuwirth,
14 who accompanied them, out to the West Coast and took
15 them on a tour of our West Coast facilities.

16 Q Approximately when did they get to the West Coast?

17 A It would have to be the, maybe the third week
18 of November, something like that. Or at least the 15th
19 of November.

20 THE COURT: This all happened though during
21 November?

22 THE WITNESS: Yes, sir.

23 Q Were there any meetings of any kind in November
24 with anyone other than Gilks and Roberts from Burmah?

25 A I'm trying to recall if we had any -- I don't

1 think so. I think --

2 Q I mean any communication of any kind.

3 A Oh, yes.

4 THE COURT: Of course he doesn't know except
5 for himself. Did you have communications with them?

6 THE WITNESS: I don't know. There could have
7 been -- yes, there was communication, certainly, on one
8 other subject because their accountants were coming in,
9 into Geon to review the work papers from a prior year,
10 and they were due to come in right after this, I remember,
11 because it was right after Thanksgiving weekend that
12 they were coming in and I can pinpoint that that it's
13 exactly that Tuesday that they started, of that week,
14 because I hadn't disclosed to anybody internally or to
15 our accountants, Arthur Anderson & Company, that any of
16 this had been going on.

17 So that I called Arthur Anderson, I think the
18 Thursday before that weekend, and they had to have their
19 people come in and work on that weekend to get the papers
20 into folders, and what-have-you, to bring over to our
21 offices and make them available.

22 Q Make them available to whom?

23 A Ernst & Ernst.

24 Q Who was Ernst & Ernst representing?

1 A Ernst & Ernst represents Burmah Oil.

2 Q What weekend was this?

3 A They came in on the Tuesday following the
4 Thanksgiving weekend. If I'm not mistaken, that Monday
5 was a holiday day.
6

7 Q What information was provided to Mr. Gilks and
8 Mr. Roberts, if any, of a financial nature?

9 A Financial information?

10 Q Yes.

11 A It would have been zero. They were here mostly
12 from a marketing point of view, operations. They are
13 operating people primarily.

14 Q As best you can, would you describe what
15 information was provided to Ernst & Ernst later?

16 A Ernst & Ernst had full access to the work
17 papers from the year 1972 provided by Arthur Anderson
18 & Company.

19 Q Work papers from 1972?

20 A That's correct.

21 Q What took place next with respect to these
22 discussions?

23 A There were one or two tentative meetings set
24 up for Max Roberts, and I think Campbell Anderson, to
25 come out to Woodbury and sit down and talk with us again.

1
2 However, there were a couple of cancellations right in
3 a row, and in fact at that point in time we pretty much
4 felt that any further interest on their part was dead
5 because of the -- I think there were two or three
6 cancellations in a row. It turned out subsequently that
7 they were so busy on the Signal acquisition they had to
8 make these cancellations of the appointments.

9 Finally at some point, Max Roberts came out
10 with us, met with us in Woodbury. He came out without
11 Campbell Anderson, and indicated that they were interested --

12 THE COURT: You say at some point. When was
13 that?

14 THE WITNESS: About, right in that same time
15 frame, your Honor.

16 THE COURT: Around Thanksgiving?

17 THE WITNESS: It may have been right in the
18 first part of December, right in the first few days of
19 December.

20 THE COURT: The last of November, the beginning
21 of December?

22 THE WITNESS: Yes. I don't have that date fixed
23 exactly because of those cancellations.

24 Q I think it might be helpful in establishing a
25 time frame if we now move ahead to early December.

1
2 A Yes.

3 Q In early December Geon put out a release
4 concerning these discussions; is that correct?

5 A Yes, that's correct.

6 MR. TIMMENY: Your HONor, counsel for Geon
7 will join with the plaintiff in stipulating into the
8 record the press release of December 3rd. I would like
9 to have it marked, please. Your Honor, at this time I
10 would like to ask counsel to produce the original that
11 was subpoenaed by the plaintiff.

12 THE COURT: The original what, the press release?

13 MR. TIMMENY: The press release.

14 THE COURT: Is there any doubt that that is the
15 same thing?

16 MR. STRUM: I just want to take a quick look,
17 your Honor.

18 THE COURT: All right, take a look.

19 MR. DRAKE: The copies we have are not the
20 best copies, that is why we are trying to get the original,
21 your HONor.

22 THE COURT: They might have a clearer copy.

23 MR. DRAKE: Yes, your Honor, the original
24 or Xerox.

25 THE COURT: Have you got a clearer copy? He

says that one is illegible.

MR. STRUM: Ours is a Xerox of a Xerox, your Honor.

THE COURT: All right. Put this one in.

MR. STRUM: We will stipulate to the text, though.

(SEC Exhibit No. 1 received in Evidence.)

BY MR. TIMMENY:

Q Mr. Bloom, did Mr. Roberts and Mr. Anderson come to Woodbury prior to the time this press release was issued?

A I don't know. That I don't know. I don't know if they came prior or subsequent to that release. It wasn't Mr. Anderson, it was strictly Mr. Roberts who appeared at Woodbury. Mr. Anderson didn't make that meeting that I recall.

Q At the time this press release was put out, Mr. Bloom, did Geon have procedures regarding the public disclosure of corporate information?

A Yes.

Q Would you describe those procedures?

A The procedures were to comply with the proper disclosure of any information that was of a nature that required disclosure. I don't know what you mean by

"procedures."

Q Well, suppose you were about to put out an announcement; what steps would you take?

A The announcement would be discussed with company counsel completely before the announcement was put out.

Q Is this pursuant to a directive or anything to officials of Geon?

A I don't think there is a directive of any kind that exists. That's just in our procedure every single time.

Q Do you have any written policies of any kind with respect to the disclosure of information to the public?

A Company policy?

Q Yes.

A Internal company policy?

Q Yes.

A No.

Q While we are on the subject, what would your company policies or procedures be with respect to withholding information which you considered but which you --

THE COURT: Well, that is an awfully long question.

MR. STRUM: Object to that, your Honor.

THE COURT: I will sustain the objection to that

question.

I take it you are telling us your company didn't have any set rules on this, either from the point of view of when you might be issuing a press release or when you might decide you are not going to issue a press release; is that right?

THE WITNESS: Yes, sir.

THE COURT: You had no rule. And who were the people who would consider it? Management?

THE WITNESS: Management would discuss it with our counsel.

THE COURT: And the management being the two Neuwirths and you?

THE WITNESS: Yes, sir.

THE COURT: And you would discuss it with your lawyer?

THE WITNESS: Yes, sir.

THE COURT: Would that be on the basis, do you think you would like to put out a statement, or would it be on the basis that you think maybe you don't want to put out a statement?

THE WITNESS: No, I think it would be that first of all we would say this particular information, do you think that it requires a disclosure of some kind

1
2 and, you know, we are not 100% all the time, if the
3 information requires the disclosure of a certain type but
4 we would certainly check with company counsel.

5 THE COURT: There would come times when you
6 had information and you didn't want to disclose it at this
7 time and you talked with the lawyer and he said, well,
8 you don't have to disclose it, did that ever happen?

9 THE WITNESS: Yes, sir.

10 THE COURT: It did happen?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right.

13 BY MR. TIMMENY:

14 Q What I'm trying to arrive at, sir, did you have
15 procedures if you had information that you did want to
16 disclose --

17 THE COURT: He didn't have any procedures. He
18 has made that quite clear. There is something you did
19 in the top management, you discussed it and you would
20 call your lawyer; is that right?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right.

23 Q Would you describe, if you will, the progress
24 of the discussions now after the December 3rd press
25 release?

1
2 A Yes. Well, the December 3rd press release was
3 made, and again I am trying for recollection on this,
4 but if I'm not mistaken there were rumors around that
5 a company was looking at Geon and that --

6 THE COURT: You mean after this press release?

7 THE WITNESS: No, I think prior to the press
8 release, your Honor. And the stock behaved very unusually
9 the week before, the stock seemed to run up on the basis
10 of this rumor, and we felt that it was incumbent upon
11 the company to make some release that Burmah and Geon
12 had been talking with the thought to a possible negotiation
13 for an acquisition, and we, in fact, I, created the
14 press release with The American Stock Exchange over that
15 weekend, and if I'm not mistaken the release of the 3rd,
16 if that's a Monday, then that's the release that was made
17 after clearing it with The Amex and the people at Burmah.

18 Q When you say you cleared this press release
19 with the American Stock Exchange --

20 A Yes, sir.

21 Q (continuing) -- how did that come about?

22 A How did it come about?

23 Q Yes, sir.

24 A Well, the problem was the liaison between Geon
25 and Burmah who had to clear the release with their people

1
2 in the U.K. at this point in time no real negotiation
3 had occurred, and I don't think they were too thrilled
4 about making the release at that point in time. We
5 felt that it was preliminary, as we did, but that something
6 was necessary.

7 So, consequently on that Friday we discussed
8 with them the making of a release, and then there was
9 a lot of back and forth communication over that weekend,
10 and I think finally it was finished on Sunday, and I
11 spoke with -- because there were some minor language
12 changes made in the release between the U. K. and the
13 United States, and then on Sunday I spoke with Randy
14 Gromet at the Amex, I read him the final version of the
15 release, and he suggested one or two word changes, and
16 I sort of talked him out of it. I said, gee, if we have
17 to go back, you know, to the Burmah people and then they
18 have to get clearance in the U. K., we will never get this
19 thing until Monday, and he agreed with me, and the release
20 was made.

21 Q Didn't the representative of The Amex actually
22 initiate the discussions with you concerning putting out
23 a release?

24 A On the 3rd?

25 Q Yes.

1
2 A Oh, that I don't know.

3 THE COURT: You don't know anything about that.
4 All right.

5 THE WITNESS: No.

6 Q Didn't you receive a call from Mr. Gromet,
7 the listing representative at the American Stock Exchange
8 urging you to put out a release concerning the discussions
9 because there were rumors in the street?

10 A That I don't recall either.

11 THE COURT: You didn't give him any that you
12 recall?

13 THE WITNESS: No. A call to me directly?

14 Q That's correct.

15 THE COURT: It might have been a call to you
16 directly, or --

17 Q No, my question is a call to you directly?

18 A I don't recall. It's possible, but that I
19 don't recall.

20 Q If you will now, you were describing progress
21 in the negotiations after the December 3rd release.
22 Would you continue?

23 MR. STRUM: I object, your Honor. He was
24 not describing the progress of the negotiation.

25 THE COURT: Yes, let's keep it to discussions.

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All right, let's take a short recess.

(Recess.)

1 THE COURT: You may proceed.

2 BY MR. TIMMENY:

3 Q Mr. Bloom, subsequent to the December 3rd release,
4 what financial information, if any, was transmitted to
5 Burmah representatives by Geon?

6 A Subsequent to December 3rd?

7 Q Yes. Let's stay close to the December 3rd period
8 and we will come along from there.

9 A I don't think there would have been any financial
10 information --

11 THE COURT: You don't recall any?

12 THE WITNESS: No, sir.

13 THE COURT: All right.

14 Q Were there any meetings after the December 3rd
15 press release? With Burmah representatives?

16 A The next meeting that I would recall would be the
17 meeting of December 17th or 18th, that week, when the
18 acquisition was actually negotiated.

19 Q Prior to the December 17th or 18th meeting, was
20 there any correspondence or any phone communication with
21 Burmah representatives?

22 A Oh, excuse me. I lost the time frame there.

23 THE COURT: Take your time. We have got December
24 3rd and the press release went out, and you spoke at a
25

meeting on December 18th. Where was that?

THE WITNESS: The meeting of December 18th was held at the Regency Hotel.

THE COURT: The Regency Hotel?

THE WITNESS: Yes, sir.

THE COURT: All right. Now he wants to know whether between the press release and that meeting at the Regency Hotel did you have any communication with the Burmah people.

THE WITNESS: Yes. Other than day-to-day communications, there was one other meeting, there was a dinner meeting that was held also in December, if I recall correctly.

THE COURT: That was before the Regency meeting?

THE WITNESS: Yes, sir.

THE COURT: Where was that held?

THE WITNESS: That was held at the New York Athletic Club.

THE COURT: You certainly saw the town in the course of these negotiations. Was that a dinner meeting, too?

THE WITNESS: Yes, it was.

THE COURT: All right. Well, I have the 17th and the 18th. When do you think you were at the New York

Athletic Club?

THE WITNESS: Sometime between.

THE COURT: Sometime in between. All right.

Then he wants to know whether apart from the press release and the New York Athletic Club and the Regency did you have any other communications with Burmah people during this period from December 3rd and December 17th.

THE WITNESS: I don't recall, but if anything, it had to be extremely limited, and again, because they were so wrapped up in this Signal acquisition deal.

THE COURT: You say there could have been, but you can't recall any specifically; is that fair to say?

THE WITNESS: Yes, sir.

THE COURT: You, yourself?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. TIMMENY:

Q Would you describe what went on at the dinner meeting at the New York A.C.?

A Yes, that was hosted by Max Roberts, and present were, in addition to him, were Campbell Anderson, Jim Keane, George Neuwirth, Michael Pisciotta, Peter Neuwirth, myself and a new individual by the name of Jay Newland.

Q Who was he?

1 A Jay Newland had just joined Burmah. I think two
2 days before that dinner. And he joined as vice president
3 in charge of corporate development. Campbell Anderson
4 was being transferred back to the U.K. To Swindon. And
5 Jay was his successor in the job, and in fact he was
6 introduced to us that night, and it was his responsibility
7 to go through the financial data that we had supplied to
8 them, and apparently begin to establish their parameters
9 for the negotiation that took place on December 17th or 18th,
10 whatever that week was.

12 Q You say that Mr. Newland's duties would be to go
13 through the financial data you had supplied.

14 A Yes.

15 Q Would you summarize to this point what financial
16 data you had supplied to Burmah?

17 A We supplied the five-year projections and
18 management text that accompanied it. We supplied the
19 pro forma income statement and balance sheet for the year
20 1973. I may have given them some other miscellaneous data
21 on breakdown between import and export sales, things of
22 that nature. I don't recall, because most --

23 THE COURT: You gave them everything they wanted.

24 THE WITNESS: Yes, sir.

25 THE COURT: All right.

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2 THE WITNESS: In fact, they didn't even have a
3 10K on the company until fairly far down the road. That
4 was one of the pieces of information I supplied to them.

5 Then Jay took the projections -- well, first of
6 all after we met with Jay, he came out and visited the
7 company, and he talked with Peter and Michael and myself
8 and discussed the five-year projections, and then went ahead
9 and prepared his proposal based upon those projections and
10 whatever subsequent work he did, I'm not privy to a great
11 deal that he did on it.

12 In coming up with revised projections on, I guess
13 whatever he felt was perhaps a more conservative basis
14 to use as a basis for valuing the company.

15 I know of that because I know those projections
16 were in evidence at the negotiations.

17 Q Let me ask you a question.

18 A Yes.

19 Q When did Mr. Newland come back to you with revised
20 projections?

21 A We weren't aware of his revisions to the projections
22 until the negotiations at the Regency Hotel, because the
23 opening of the negotiations they based their first offer on
24 a set of revised projections that we had never seen, and
25 they were based upon a set of discounted cash flows that he

1
2 had done that had some invalid assumptions in his pro formas,
3 and consequently, we stopped the negotiations at a point
4 in time because we just weren't near each other.

5 He and I worked on into the night revising, with
6 David Gavrin, as a matter of fact, because David Gavrin
7 was present, worked on it working on his pro forma schedules
8 and changing some of the assumptions in there.

9 Q This would have been the night of December 17?

10 A If that was the first day that we met, then I
11 would say that was the night we worked on it. We worked
12 quite late on that.

13 MR. TIMMENY: Your Honor, we have subpoenaed
14 press releases from Geon, and I believe there was a press
15 release on the 18th.

16 I would now request counsel to provide us with
17 copies of the press release.

18 THE COURT: All right.

19 MR. STRUM: Your Honor, we have a complete file
20 of press releases.

21 THE COURT: He doesn't want that, he wants the
22 one on the 18th. He wants to refresh the witness'
23 recollection.

24 MR. STRUM: Surely.

25 THE COURT: Let's take a look at it.

BY MR. TIMMENY:

Q Now, let's go on with the meeting at the Regency.

THE COURT: Well, how about letting us know what happened at the New York Athletic Club which was before that? What happened at the Athletic Club?

THE WITNESS: Well, at the Athletic Club we had a, again, a very congenial dinner, and one of the reasons for that dinner was to indicate to us that the people at Burmah were interested in going forward and establishing a date for Peter Simonis to come over from the U.K. to the United States to do the actual negotiation, assisted by Max Roberts and by Jay Newland. And, in addition to introduce us to Jay Newland, because this was the first time we had ever seen him, and we would have to do some substantial amount of work with him in going forward.

BY MR. TIMMENY:

Q What discussions took place concerning the discussions that you had --

A I'm sorry, what discussions took place at the Athletic Club?

Q Yes.

THE COURT: I think he just indicated, as I understand it, that the purpose that was so that you fellows could meet Newland, if that is his name, and arrange a time

when the big man -- what was his name?

THE WITNESS: Mr. Simonis.

THE COURT: Simonis would come over and get into the negotiations?

THE WITNESS: That's correct.

THE COURT: That is what they were doing there.

BY MR. TIMMENY:

Q Nothing further was said then with regard to progress of discussions?

A Well, certainly that they were going to make an offer for Geon, that they were interested in the company, and that we would set a negotiating date.

THE COURT: You were aware at the New York Athletic Club that an offer might be forthcoming or would be forthcoming?

THE WITNESS: I am fairly certain, yes.

Q Now, we will go to the meeting at the Regency on the 17th.

A Yes.

Q Would you describe that meeting?

A Well, the meeting was set for, I think, about four o'clock in the afternoon, but as it turned out, they had to call up and delay it somewhat and didn't show up until about six or 6:30 that evening.

1
2 Q Who was present?

3 A Max Roberts, Peter Simonis, Jay Newland, George
4 Neuwirth, Peter Neuwirth, Michael Pisciotta, myself.

5 Q What happened, if anything, at the meeting?

6 A Well, do you want all the details of the --

7 Q You said that Mr. Newland opened up with some
8 revised earnings projections; is that correct?

9 A Yes, but not at that point.

10 Q All right, tell us what happened.

11 A Okay. First we sat down, we all sat down around
12 a large table, I think some people ate something because
13 they hadn't eaten dinner, and the first question posed by
14 the Burmah people to us was that, it was by Peter Simonis,
15 he said that before they enter into any discussions about
16 price that they have to have an assurance at this point in
17 time that certain operating officers of the company would
18 be willing to sign four-year employment agreements; that
19 that was one of their major areas of concern, because they
20 did not have any management people in the United States to
21 operate the company.

22 We had some general discussion about the contracts
23 and the terms of the contracts, and again, very generally
24 without specifics on the employment contracts, but just
25 that they weren't going to be anything very, very unusual

1 in the way of employment contracts, we said, yes, we would
2 be willing to sign four-year employment contracts.

3 Q What persons did they want to sign the four-year
4 employment contracts?

5 A Initially, specifically, Peter Neuwirth, Michael
6 Pisciotto and myself.

7 Q You said there was a fourth?

8 A No, four-year.

9 Q Excuse me. What transpired after the discussion
10 concerning the employment contracts?

11 A Well, Peter Simonis then said that they had been
12 looking over the financial material and they had been looking
13 over the analysis work that Jay did on the information that
14 he had, and in addition indicated that they had looked over
15 conditions in terms of the fuel shortage that was, you know,
16 or in evidence at that point in time, and what they felt
17 was happening to the replacement parts industry in the
18 United States, and they made an offer, an initial offer of
19 thirty million. Peter Simonis said, our initial offer is
20 thirty million, and I remember that vividly because Michael
21 Pisciotto asked if he meant pounds, and he said, no, dollars.

22 We at that point said, well, something is wrong,
23 we just don't think that that's a correct valuation for the
24 company, and we had a little bit of small talk about whether
25

1 it paid to sit and talk further at that point in time or
2 if we should perhaps adjourn and talk to each other.

3 I think probably around that point in time the
4 question of the analysis work that Jay Newland had done
5 came up, and I asked, well, I'd like to see some of the
6 numbers that you are working with, because, you know,
7 something just doesn't seem right. And I looked at the
8 analysis that he had done, and I said, well, wait a minute,
9 you have made certain assumptions here that I think are
10 fallacious and we had some discussion, and finally it was
11 decided that Jay, David Gavrin and I would stay and we work
12 the numbers and that everybody else would leave the room
13 and the meeting would be reconvened the following day.

14 Q All right. Then what happened when you made that
15 decision? Did you adjourn?

16 A Yes. They went to eat, I think. We had eaten
17 something previously. Then everybody else went out to eat,
18 or to have a couple of drinks, I'm not certain.

19 Q All right. And you discussed the projections
20 with Mr. Newland?

21 A That's correct.

22 Q Would you tell us about that discussion, please?

23 A We discussed some of the parameters that he had
24 used, and frankly, some of it was just negotiating ploys,
25

1 where I had used 20% in a mathematical fashion, he cut it
2 back for conservative reasons to 16%. Why not 17 or 18%,
3 or any number of things. Things concerning overhead rates
4 going forward, the incremental cost of overhead rates going
5 forward. Things of that nature.
6

7 Finally, we agreed upon a new set of parameters.
8 We rated all of the analysis work that he had at that
9 point in time, then he indicated that he wanted to work a
10 little further on it the following morning. And we set a
11 meeting time for the following morning of, perhaps ten
12 o'clock, something like that, I'm not certain, 9:30, and
13 then we met the following morning.

14 Q Where did you meet the following morning?

15 A We met at their hotel -- I think we met at their
16 hotel. I think we met at the Plaza. Yes, we did. We
17 met at the Plaza the following morning. No, it wasn't
18 the Plaza. I'm sorry. It was the -- I think it was the
19 Pierre, the following morning.

20 Q Who attended this meeting at the Pierre?

21 A The same people that were present at the meeting
22 the day before. And we --

23 Q Meaning the whole crew, not --

24 A Yes, the entire attendants of the previous
25 meeting was there. And they again made us an offer of

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2 thirty two, three, four million, something like that.

3 In any event, we went through a negotiating
4 process back and forth and they finally came to us with an
5 offer which they said was their top non-negotiable offer
6 of \$36,000,000.

7 We had some discussion concerning some of the
8 stock options and the treatment thereof, things of that
9 type --

10 THE COURT: With them, or was this after --

11 THE WITNESS: We had the discussion with them,
12 your Honor.

13 THE COURT: With them. All right.

14 A [continuing] And we said, well, if you can in
15 addition do these certain things, then we feel that it's
16 a fair and reasonable price, and we shook hands on it. We
17 had a deal.

18 Q All right. Did anything else take place at this
19 meeting at the Pierre? Did you arrange another meeting,
20 another session?

21 A I don't know if we arranged a meeting at that
22 point in time, because our next meeting was a meeting that
23 I was present for with our attorneys, and their attorneys,
24 and their internal -- some of their internal people at their
25 offices, and that was frankly to discuss the form of the deal.

1 Because at this point in time we hadn't even discussed
2 whether this thing would be a tender or a purchase of assets
3 or anything. All we knew was we had a deal for "X" dollars.
4

5 Q Did you put out a press release at this time?

6 A Yes.

7 MR. TIMMENY: Your Honor, again we have subpoenaed
8 the press release.

9 THE COURT: Have you got that press release?

10 MR. TIMMENY: I believe it was December 20th.
11 I would like to have this marked for identification, your
12 Honor.

13 THE COURT: Is there any objection to this being
14 received? If not, I will receive it as Exhibit No. 3.

15 MR. STRUM: No objection, your Honor.

16 THE COURT: All right, thank you.

17 [SEC Exhibit No. 3 received in evidence.]

18 BY MR. TIMMENY:

19 Q Mr. Bloom, I show what has been received in evidence
20 as SEC Exhibit No.3, and you will note there that the term
21 is used in the press release, "Agreement in Principle."

22 A Yes.

23 Q Was there any sort of a letter agreement
24 representating an agreement in principle, or did this
25 represent just a handshake you had had at the close of the

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2 meeting at the Pierre?

3 A Just a handshake.

10 4 Q Mr. Bloom, you will note that the press release
5 refers to \$16.80 per share.

6 A Yes, that's correct.

7 Q Is that correct?

8 A That's correct.

9 Q Is that based solely on the \$36,000,000 offer?
10 Any other consideration arrived at with respect to the
11 \$16.80 a share?

12 A No, that was based on the \$36,000,000.

13 Q Mr. Bloom, at the conclusion of the meeting at the
14 Pierre, was there any timetable established with respect
15 to further discussion?

16 A As I indicated before, I don't recall that at that
17 point in time we set a date to meet at Burmah's offices
18 to determine the form of the deal, whether it would be in
19 the form of a tender offer or a purchase of assets. But
20 sometime within a short period of time we did meet at the
21 Burmah offices, and after some discussion with their attorneys
22 and our attorneys, we came to the conclusion that it would
23 be done as a purchase of assets.

24 Q Was there any public announcement with respect
25 to this agreement that there would be a purchase of assets?

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A No.

Q Did the financial arrangements remain the same although it would be a purchase of assets, it would still be \$36,000,000 or \$16.80 a share approximately?

A That's correct.

Q What next took place with respect to these acquisition discussions?

A We received the -- well, in the interim I did some very minor work for them concerning the tax effect of liquidating some of the subsidiaries, the purchase of assets involved a purchase of stock of all the subsidiaries which is owned by Geon Industries, that's a holding company, and there were some taxable effects dependent upon how the transaction was done. I did a little bit of work on that.

Then the next thing was a contract that was drafted by Burmah's counsel, Simpson Thacher and Bartlett, and a first draft was sent to me, I guess in the first week of January, someplace in there, right around the beginning of January 1974, and of course, to our corporate counsel, Kaye Schoeler.

Q Let me backtrack just a second.

A Sure.

Q Was there any provision in connection with your agreement in principle with respect to Geon's earnings or

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2 sales?

3 A At that point?

4 Q Yes.

5 A At the point we had an agreement in principle?

6 Q Yes.

7 A I don't think so. No, in fact, I can be fairly
8 certain that there wasn't.

9 Q All right. Go on, if you will, then, with
10 respect to the further discussion.

11 A Okay. Then we received the first draft of the
12 contract, and quite frankly, the contract form was not
13 at all acceptable to us, to Geon, because it was an extremely,
14 extremely tight contract in just all respects. And that
15 began the negotiating process to finally hammer out an
16 acceptable contract which was a rather long process over
17 the next couple of months.

18 Q What transpired then after this first session here
19 in January? Did you have additional meetings?

20 A I don't know if we had in-person meetings or if
21 everthing was done over the phone until we were down to a
22 fairly -- there were one or two, no, there were one or two
23 meetings with them subsequent to that in coming up with a
24 contract form. But basically a great deal of the work was
25 done by phone and between company counsel and myself.

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Q As to the time of the first week in January when you had a first draft contract --

A Yes.

Q [continuing] -- were there any provisions in the contract with respect to a net worth year-end 1973 for Geon, or certain earnings by the --

THE COURT: Representations? Did the contract have representations? The draft?

THE WITNESS: Yes. I would have to see the first draft of the contract to see if they were in there, but it was definitely in the contract at some point in time.

MR. TIMMENY: Your Honor, I believe we subpoenaed the contracts, and that would include the first draft.

I now call upon counsel to produce them.

THE COURT: Do you have a draft of the contract?

MR. STRUM: No, your Honor, we don't. We received a subpoena from the SEC --

THE COURT: Well, never mind all that. You haven't got one here?

MR. STRUM: No, sir.

THE COURT: Do you have any drafts of the contract?

MR. STRUM: I think we do, yes.

THE COURT: Well, see what you have got.

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2 Gentlemen, the witness thinks he may have the
3 contract himself.

4 THE WITNESS: That may be in my contract forms.

5 BY MR. TIMMENY:

6 Q Was Mr. Neuwirth a party to the discussions --

7 MR. STRUM: Excuse me, your Honor, may I --

8 MR. TIMMENY: I think I can help you out. If
9 Mr. Neuwirth was party to the discussions, we are going
10 to put him on later, maybe we can put the contract on
11 through him. I am just trying to move along.

12 THE COURT: All right. Thank you. Yes. Let's
13 move along.

14 MR. TIMMENY: If counsel will undertake to give
15 us the contract before we go home tonight.

16 THE COURT: Yes.

17 MR. STRUM: Your Honor, we are going to turn over
18 at the end of today's session every piece of paper that
19 has been subpoenaed, and they can have those papers overnight
20 and they can go through them.

21 THE COURT: All right. They will enjoy that.

22 MR. TIMMENY: As I say, as long as I understand
23 Mr. Neuwirth was party to these discussions, we can put it
24 in when he is a witness.

25 THE COURT: All right.

1
2 BY MR. TIMMENY:

3 Q Can we establish, Mr. Bloom, that there were
4 some contingencies in the draft contracts concerning Geon's
5 earnings for 1973 and Geon's net worth for year-end 1973?

6 A That's correct.

7 Q These contingencies, if you will --

8 THE COURT: Why do you keep calling them
9 contingencies? These were representations?

10 MR. TIMMENY: Yes, your Honor.

11 THE COURT: All right.

12 Q These representations were present from the first
13 draft on?

14 A I think so. If I'm correct. But they were
15 certainly in at an early stage.

16 Q What effect would there be on the discussions,
17 or the contract if you didn't meet these representations?
18 What was your understanding early on in January with respect
19 to the effect on the acquisition if you didn't meet the
20 representations concerning earnings?

21 MR. STRUM: I object to the question, your Honor.

22 THE COURT: I am not sure I understand the question.
23 I suppose the contract provided that Geon would have earnings
24 of such and such amount, or at least such an amount, and
25 that their cash position at the end of the year would be

such and such; is that what --

THE WITNESS: Yes, sir.

THE COURT: If you remember, what did the contract provide if the earnings were less than that for 1973, or they didn't have that cash position? Do you remember what the contract --

THE WITNESS: Yes. It was similar to any of the other conditions in the contract.

THE COURT: It was an out for them.

THE WITNESS: Yes, sir.

THE COURT: It was an out for them. All right.

Q There will be no acquisition?

A Well, it was an out, or a renegotiate.

THE COURT: It was an out. They could still take it, but still they had an out. All right.

Q All right. Let's move along then, Mr. Bloom, to the period toward the end of February, and I invite your attention to a board meeting on February 21.

A Yes.

Q Do you recall that meeting?

A Yes.

Q When was that board meeting scheduled, if you will?

A About a week before. I think the Thursday, if the

21st was a Thursday meeting, I think it was scheduled the preceding Thursday.

Q How were the members of the board notified of the proposed meeting?

A Well, a meeting notice went out, but I would call or have my secretary call them in any event.

THE COURT: How many directors are there?

THE WITNESS: There were eight.

THE COURT: Eight directors?

THE WITNESS: Yes, sir. If I'm not mistaken on that earlier Thursday at that point it was still a tentative meeting for the following Thursday, because there were one or two points on the contract that we did not have complete assurance back from Simpson Thacher, from Burmah's counsel. I don't think we knew that we had a final contract form until perhaps Friday, perhaps the day after the meeting was actually scheduled.

Q What was the purpose of the meeting?

A The purpose of the meeting was to approve the contract.

Q The contract had to be approved by the board?

A Yes.

Q Before it could be signed by a representative of the company?

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2 A Yes.

3 Q At this point, that is approximately the Friday
4 prior to the meeting of February 21, was the contract
5 agreeable to the negotiators on both sides?

6 A Yes.

7 Q Were there any steps taken to prevent the -- well,
8 let me backtrack a second.

9 Was there any public announcement of this
10 February 21 meeting?

11 A No.

12 Q Were there any steps taken to prevent the
13 scheduling of the meeting from becoming known generally to
14 the public prior to any announcement by the company?

15 MR. STRUM: I object to the question.

16 THE COURT: That is a tough question. I think I
17 will sustain the objection to that question.

18 You say you made no public announcement of this
19 meeting. You did send out a notice, though, I take it,
20 and you said you would have your secretary call up. Did
21 you say to any of the people, don't tell anybody we are
22 having a meeting?

23 THE WITNESS: I don't recall if I would have said
24 that, your Honor.

25 THE COURT: Well, you don't recall whether you said

10:30 a.m. on the morning of the 21st from Stanley Chin?

A Yes, I do. I don't recall if he called me or if I called him.

THE COURT: Who is Stanley Chin?

THE WITNESS: Stanley Chin is an assistant controller at Geon.

Q Can you estimate the time of this phone call? Was it about 10:30?

A I would guess about 10:15, 10:30.

Q Chin asked you a question about booking certain intra-company profits at that time, did he not?

A I think I called him about some other question, to ask him if information had started to come in from some of the other divisions, and in the process of that phone call he mentioned to me something about the booking of either an inter -- I don't remember if it was an inter or intra-company profit elimination, and the question struck me as peculiar. It struck me as wrong. And I queried him. I said, why are you asking me about the treatment of this entry at this point in time?

And he said, well, I'd have to make the entry, or something to that effect.

So, I said, well, look, I tried to walk through the entry, I asked him, has it been made, he said, no, I

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2 don't think so.

3 I said, well, let's walk through the entry. I
4 tried to do that over the phone. I didn't get any place
5 really.

6 Q How much money was involved here? What were you
7 talking about?

8 A \$314,000.

9 Q And this \$314,000 represented intra-company profits?

10 A From a prior period, yes.

11 Q What do you mean?

12 A There would be a cumulative elimination probably
13 from '72, '71, '70, '69. It goes back to prior operating
14 periods.

15 Q All right.

16 A This is actually not a profit elimination of the
17 current period, it's a reversal of one from the previous
18 period.

19 Q This \$314,000 item was a substantial item, was it
20 not?

21 A Yes, it was.

22 Q And you said that this question bothered you
23 from Mr. Chin?

24 A Yes. So, at that point I said to him, well,
25 don't try to go into it yourself now. When Jim comes in,

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2 Jim McMahon, have him check the entry out, and either you
3 or Jim give me a call back.

4 Q Now, Jim McMahon called you back; is that right?

5 A Yes.

6 Q Who is Jim McMahon?

7 A Jim McMahon was the controller of Geon Intercontin-
8 ental Corporation.

9 Q All right. Now, McMahon told you, did he not,
10 this \$314,000 had never been properly reversed?

11 A That's correct.

12 Q And it was sitting as an income item and it
13 should not have been there?

14 A That's correct.

15 Q Had this \$314,000 item been included in projected
16 earnings up to this point?

17 A It had no bearing on projected earnings.

18 THE COURT: I think your question is whether
19 on the financial statements that had been made available
20 was this included?

21 THE WITNESS: It would not have had any bearing,
22 your Honor, because the financial statements that were
23 made available were done on a historic, or an estimated
24 gross profit basis.

25 THE COURT: Well, the answer is no.

1 THE WITNESS: Yes.

2
3 MR. TIMMENY: That is not my question, your Honor.

4 Q My question is: Was it included in projections?

5 THE COURT: In projections for the future?

6 Q In projections for earnings for 1973.

7 MR. STRUM: I'm afraid I don't understand the
8 question, your Honor.

9 THE WITNESS: I don't, either.

10 THE COURT: Well, I don't think I do. But, if
11 you can answer it -- as I got it from you, it was not
12 included in any of these computations you made; is that
13 correct?

14 THE WITNESS: That's correct.

15 THE COURT: Including projections for the
16 earnings for 1973.

17 THE WITNESS: That's correct.

18 THE COURT: All right.

19 Q All right. Mr. McMahon had said to you that this
20 item was sitting in as an income item and should not have
21 been?

22 A That's correct.

23 Q What was the effect then of this \$314,000 error?

24 A What was the effect on the financial statement?

25 Q Yes.

1
2 A Okay. The effect on the financial statement was
3 to increase the gross profits that we were achieving on the
4 east coast warehouse for 1973 so far based upon the
5 physical inventory.

6 Q What was the bottom line effect of this \$314,000
7 error?

8 A The bottom line effect of this error was to
9 increase the income originally by \$314,000.

10 Q For what period?

11 A For 1973. The year 1973. And by reversing it
12 properly, by treating it properly, it would decrease the
13 income by \$314,000. However --

14 THE COURT: I don't follow you. I'm awfully dumb
15 about these things. If it is not in the figures at all
16 it won't increase or decrease.

17 THE WITNESS: That's precisely -- your Honor,
18 could I go through an explanation of how this occurs?

19 THE COURT: That is the way it seems to me, but
20 if it wouldn't increase it, I don't see how it decreased it.

21 THE WITNESS: Well, we report our earnings on
22 an interim basis on a historical gross profit. The
23 historical gross profit, or estimated gross profit for the
24 east coast warehouse that was used for reporting and
25 projecting purposes was approximately 36%.

2 When we come down to the year-end and we take a
3 physical inventory and in the final valuation of that
4 inventory, we then compare what our closing inventory
5 finally produced, if you will, as a gross profit to the
6 estimated gross profit that we were reporting with during
7 the year. Now --

8 Q Let me stop you right there.

9 A Yes.

10 Q In other words, this error had been included in
11 your estimated gross profit for the year?

12 A No. I'm sorry, that's not correct.

13 Q Go on, please.

14 A May I? Our estimated gross profit that we were
15 using for the year was 36%, as I indicated, on the east coast
16 warehouse. Because this item had not been properly reversed,
17 it tended when we compared our physical inventory at
18 year-end, it tended to increase the gross profit that it
12 19 looked like we were achieving for the year 1973.

20 At that point in time while this item was booked
21 incorrectly we were showing a gross profit achieved on the
22 east coast warehouse of something in the low 40% range,
23 which was well in excess of the gross profit that we had
24 been reporting on during the year.

25 By correcting this error we reduced the gross

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profit achieved on the east coast warehouse from 41%, or
41 and a fraction percent, down to about 37-1/2%, but
still in excess of that which we had used for reporting
during the year, and which we had used to project our
estimated earnings for the year.

As a matter of fact, based on a subsequent audit
adjustment of a cutoff error made by Arthur Anderson &
Company, the final gross profit finally achieved on the
east coast warehouse was 39 point something percent, well
in excess of that which we had used for reporting and to
estimate our current year's earnings.

I tried to explain this item previously.

Q Let me backtrack a minute to your discussion with
Mr. McMahon.

A Yes.

Q You indicated that Mr. McMahon told you that this
\$314,000 was sitting in as an income item and should not
have been there.

A Yes.

Q Did Mr. McMahon's statement to you evoke any
response from you?

A Yes. I was annoyed, because sometime around the
tail end of the previous week I had queried -- although
the inventories and all the cutoff work hadn't been

1 finished -- I had asked, how did the east coast warehouse
2 look? We're always curious, that's the first inventory
3 we get back, we're always curious to see how our actual
4 gross profit for the year looked compared to what we are
5 estimating, and the first question I ask is of all the
6 inter and intra-profit eliminations that they have been
7 properly booked from prior periods.
8

9 THE COURT: Who did you ask?

10 THE WITNESS: I'm sure I asked Jim McMahon at
11 that point in time, and he had given me an affirmative
12 answer because he was probably under the impression that
13 the item had been properly treated, or reversed at that
14 point in time. So now, when I come down to this Thursday
15 morning and I was under the impression that our gross
16 profit actually achieved, it was going to be very, very
17 high at the east coast warehouse, instead of just a little
18 bit higher than that which we had estimated, and I was
19 very annoyed at that point in time because that's rather
20 a late date to find out that a simple -- a simple mechanical
21 entry that should just be automatically done, that's
22 really the way to characterize the entry, that it hadn't
23 been done especially since I had specifically asked about
24 this.

25 Q Now, I had asked you whether or not McMahon's

answer evoked any response. You said you were annoyed.

A Oh, I was absolutely fuming.

Q Did you ever indicate you almost had epilepsy when you heard his answer?

A No, that's a typo. I said apoplexy.

Q All right. Did you ever indicate that you almost had apoplexy?

A I was absolutely furious.

Q Now, Peter Neuwirth was with you, was he not, while you were having this conversation with Mr. McMahon?

A Yes, he was. He was right across the desk from me in my office.

Q Have we established you were having a phone conversation with McMahon?

A Yes, the accounting department is located in another building. We moved them there in January or February of 1974, because we were out of space at the main location in Woodbury.

Q Did you and Mr. Neuwirth discuss this development as it was being relayed by Mr. McMahon?

A Well, I still didn't believe that this entry hadn't been made, and I was trying to walk through the entry over the phone. And I was -- Peter saw that I was very much upset. I was annoyed and embarrassed, because

1 we had been talking about this super gross profit at the
2 east coast warehouse, you know, for one or two days that
3 week, and pretty much dismissed it as being a sure thing.
4

5 So I started to do something I don't think I
6 ever did before, and I started to yell and get very annoyed
7 over the phone, and Peter said, well, look, you're not
8 getting anyplace, and why don't you go over there and see
9 what you can find out, which I did. I walked across the
10 street. And I sat down with Jim and we went through the
11 entry to see whether it had gone through the accounts
12 properly, and it was a little bit of a job to do because
13 our general ledger is on the data processing system, and
14 items flow through the accounts. If you make an error in
15 one month you have to take that error out and put it in
16 formally the next month.

17 In any event, we walked through this item --

18 Q Let me ask you a question first.

19 A Surely.

20 Q Did you ever indicate to anyone that your purpose
21 in going over to check these figures with Mr. McMahon was
22 to verify that you dreaded had happened?

23 A To verify what I dreaded had happened?

24 Q Yes.

25 A I don't know if I used -- I don't know if I used

that language or not.

Q Do you recall testifying under oath before the officers of the SEC on March 4th, 1974?

A Yes.

MR. TIMMENY: Page 25, your Honor, if you have a copy.

THE COURT: Page 25?

MR. TIMMENY: Page 25.

THE COURT: Go ahead with the questioning.

MR. TIMMENY: Very well, your Honor.

Q Mr. Bloom, do you recall being asked the following question and giving the following answer -- actually the question is back on Page 24, counsel and your Honor, at Line 22:

"Q. What are the numbers that they were supposed to be getting? Gross sales? Profit?

"A. They had sales figures, but they were supposed to be getting pre-tax numbers without details."

A That's correct.

"A. Because it's too lengthy of a job. We recently moved the bulk of the accounting department down the road to some other office space. We had inadequate space, so I went across to this other building, and I took a look at this item. This, I think I spent from about

1 maybe 11:45 by that point in time, or maybe 11:30, or
2 12:30 or something like that, and all I did was go in and
3 look. We have a considerable portion of our accounting
4 records on a computer system, when you want to look for
5 something, you really have to do a lot of flipping and
6 flopping.
7

8 " So, what I did was I went there and I tried to
9 mechanically verify this thing was the way I dreaded
10 that it had come through."

11 A Yes.

12 Q "Q. Being a \$314,000.

13 "A. Right."

14 A Yes.

15 Q Do you recall that question being asked and that
16 answer being given?

17 A Yes.

18 Q Why did you say you dreaded the way this thing
19 had come through?

20 A That's only because we had been under the
21 impression that we had done very well on gross profit at
22 the east coast warehouse. Much better than we finally
23 ended up even though we did come out with an excess gross
24 profit. And to me to talk for three or four days with
25 operating officers of the company, Peter Neuwirth specifically,

1 Michael Pisciotta and discussing these things under the
2 impression that you have 41 plus percent gross profit
3 and using 36, and then you find out on Thursday morning
4 that you have got a \$300,000 error in there, that brings
5 it down to 37-1/2%, is not a very pleasant surprise at
6 that point in time.
7

13 8 Q When had you first received these pre-tax
9 preliminary figures from Mr. Chin?

10 A Pre-tax, or gross profit?

11 Q No, no. We are talking about the preliminary
12 figures.

13 A Okay. At the same --

14 Q That are being assembled by Chin.

15 A Right.

16 Q When did he transmit them to you originally?

17 A At the same time that morning I started to get
18 pre-tax numbers on the other operating divisions.

19 Q Where had you gotten the gross profit numbers
20 then originally?

21 A Well, the only gross profit number that I had
22 at that point in time was the Woodbury warehouse, east
23 coast warehouse, and the Aviation Division, American
24 Aviation, our Aviation Division we had some preliminary
25 gross profit figures at that point in time. I don't think

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we had anything else.

Q When did you get the Woodbury warehouse figures?
Gross profit figures.

A The first feel for the percentage?

Q Yes.

A Oh, I'd say the late part of the previous week.
Mid to late part of the previous week.

Q And that would be approximately when?
Mid-February?

A Oh, yes, that would be the 13th, 14th, 15th.
Something like that. Whatever that Thursday or Friday
of the last week was.

Q What about the east coast warehouse figures?

A That is the one I am talking about.

Q Is that Woodbury?

A Yes.

Q Is that one and the same?

A I'm sorry, that is the same.

Q What is the other location you mentioned?

A The American Aviation, that's our Aviation
Export Division.

Q When did you get these gross profit figures?

A Well, we didn't have a final gross profit figure
at that point in time. Those would be also around the same

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point in time.

Q About the end of February?

A No, about the end --

Q About the middle of February, rather?

A I would say so, yes.

Q Are you sure you didn't get some of these figures on the east coast warehouse back in December?

A Back in December?

MR. STRUM: I object, your Honor. He said some of these figures. I frankly don't know what "some of these figures" refers to.

THE COURT: Yes.

Q Are you sure you didn't get the gross profit figures on the east coast warehouse in December, late December?

A That's impossible to have gotten it in December.

Q Could you have gotten them in January?

A That's impossible to have gotten. We don't take our physical inventories until the first week of January.

Q These figures aren't based on a physical inventory, are they?

A I'm sorry, they are.

Q I thought they were based on a gross profit percentage.

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A We're talking about comparing final gross profit percentage after the taking of a physical inventory to the estimate gross profit percentage that --

THE COURT: Then the interim statement you used this 36%, and when you take your physical inventory at the end you have to adjust it.

THE WITNESS: Yes, sir.

THE COURT: I think we will adjourn now. I think I will be through with this criminal case by a little after eleven o'clock tomorrow. I don't want to keep you waiting around. Do you want to make it 11:30 tomorrow morning?

MR. TIMMENY: Very well, your Honor.

THE COURT: Is that agreeable?

MR. STRUM: Yes, your Honor.

THE COURT: 11:30. All right.

(ADJOURNED TO JUNE 18, 1974.)

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SECURITIES AND EXCHANGE COMMISSION

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vs.

74 Civ. 1496.

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GEON CORP., et al.

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New York, June 18, 1974;
11.40 o'clock a.m.

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(Hearing resumed.)

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THE COURT: You may proceed.

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MR. ZELERMYER: Good morning, your Honor.

13

Pursuant to your Honor's direction yesterday

14

Mr. Rauch and I are here this morning.

15

Mr. Timmeny has informed me that he does not

16

expect to call Mr. Rauch to the stand today and has agreed

17

to give us one hours' notice before Mr. Rauch would be

18

called.

19

THE COURT: Is that agreeable?

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MR. TIMMINEY: Yes, that is agreeable, your

21

Honor.

22

MR. ZELERMYER: Thank you, your Honor.

23

THE COURT: All right.

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MR. TIMMINEY: Your Honor, before we resume the

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examination of Mr. Bloom I would like to request the per-

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mission of the Court to have an SEC staff accountant sit at the table with me, because I intend to go into -- to present, or attempt to present some work papers, and I think it would expedite the presentation of the evidence if he were here to assist me.

Mr. Strum has indicated that he has no objection.

THE COURT: That is all right, yes. It might help us all.

MR. TIMMINEY: Thank you.

THE COURT: What is the gentleman's name?

MR. TIMMINEY: Your Honor, this is Morris Lafferman, staff accountant at the Securities and Exchange Commission.

THE COURT: All right.

--

F R A N K B L O O M , called as a witness by the plaintiff, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. TIMMINEY:

Q Mr. Bloom, as you will recall yesterday we were discussing a \$314,000 figure that Mr. McMahon had told you was sitting in as an income item in your East Coast warehouse that should not have been there?

1 ms3 Bloom-direct

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2 A That's correct.

3 Q What next happened as I recall is you went
4 across the street to check this accounting matter your-
5 self.

6 Now, after you checked this matter with Mr.
7 McMahon is it not a fact that you found the effect of this
8 error was to decrease Geon's profits on a consolidated
9 basis by \$314,000?

10 A Yes, except that that's not the entirety of the
11 answer. As I explained to you the other day.

12 May I?

13 THE COURT: Go ahead. Yes.

14 He said it did reduce the profit on the
15 consolidated statement by \$314,000, but, go ahead.

16 THE WITNESS: But that reduction was a reduction
17 of a profit in excess of that which we anticipated for the
18 East Coast warehouse.

19 THE COURT: Well, that's a different question.
20 That is a different question. You anticipated in the
21 interim statements, I think, a percentage, what was that
22 percentage?

23 THE WITNESS: 36.2.

24 THE COURT: And even with the reduction this
25 was more than 36 percent?

1 THE WITNESS: That's right.

2
3 MR. TIMMENY: You mean even with the reduction
4 you had 39 per cent?

5 THE WITNESS: That's right.

6 THE COURT: I understood that yesterday.

7 THE WITNESS: At that point we had 37-1/2 per
8 cent, ultimately we ended up with a little over 39 per
9 cent.

10 BY MR. TIMMENY:

11 Q But isn't the bottom line effective this error
12 to reduce Geon's consolidated earnings by --

13 THE COURT: I didn't hear what you said.

14 Q Isn't the bottom line effective this error --

15 THE COURT: He said that. He said that's
16 right. That's what you just said.

17 A But that's not -- excuse me, but that's a dis-
18 tortion of what the effect of that \$31,000 is.

19 THE COURT: Well, I mean, you are relating it to
20 the 36 per cent again.

21 THE WITNESS: Yes, your Honor, but it's an error
22 correction of -- it's something that never would have gone
23 to the P & L, and it's a correction of something that was
24 an error to begin with and had absolutely -- it should
25 have a zero effect.

1 ms5 Bloom-direct 99
2 THE COURT: What you're saying is that the
3 correction of this error didn't in any way change the --
4 you were still doing better than you had estimated on the
5 interim statements in the East Coast warehouse.

6 THE WITNESS: Yes, sir.

7 THE COURT: I understand. All right.

8 Q Isn't it a fact that the opening inventory in
9 1973 at the Woodbury and the Compton warehouses was under-
10 stated by \$314,000?

11 A That's not correct, I'm sorry. Absolutely not.
12 If you would like I will give you an explanation.

13 Q Why do you say that's not correct?

14 MR. STRUM: I object to the question, your Honor.
15 He asked him if it is correct, and he said it is not correct.
16 I think --

17 THE COURT: Well, so far I understand the
18 witness' testimony to be that the bottom line profit on
19 the consolidated basis was reduced by \$314,000 because of
20 this error, and then he goes on to say that on the basis
21 of the ratio, projected ratio he was still doing better
22 than he did before, and I don't see you need to go any
23 further than that.

24 MR. TIMMENY: May I have your indulgence for a
25 moment, your Honor?

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THE COURT: Surely.

MR. TIMMENY: Your Honor, I would like to have
a document marked.

(SEC Exhibit No. 4 was marked for
identification.)

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MR. TIMMENY: May I approach the witness, your
Honor?

THE COURT: Yes.

BY MR. TIMMENY:

Q Mr. Bloom, I show you a document that has been
marked SEC Exhibit No. 4 for identification (handing), and
I ask you if you can identify it, please?

A This is a work sheet that is used to calculate
the intracompany profit elimination between the Geon ware-
house and Geon branches, and these happen to be the East
Coast branches.

MR. TIMMENY: It is offered in evidence, your
Honor.

MR. STRUM: May I see it, please?

THE COURT: Yes, surely.

MR. STRUM: Your Honor, before it is offered in
evidence may I inquire on the voir dire?

THE COURT: Go ahead.

1 VOIR DIRE EXAMINATION

2 BY MR. STRUM:

3 Q Mr. Bloom, could you please tell me by whom
4 this document was prepared and at what point in time
5 (handing)
6

7 A I don't know at what point in time it was pre-
8 pared. It was prepared by, it looks like Stan Chin's
9 handwriting, and it might be -- it might be Jim McCormick,
10 I'm not sure.

11 THE COURT: But you recognize that as a document
12 in Geon's business and prepared by the accounting department?

13 THE WITNESS: Yes, sir.

14 Now, I don't know if this is from 1974 or from --
15 was this from the 1973 work paper files, may I ask?

16 MR. TIMMENY: This is from the file labeled
17 Geon Industries, Inc., December 31, 1973.

18 THE WITNESS: Okay. Then this is the 1974
19 work papers -- 1973 work papers.

20 THE COURT: All right.

21 MR. STRUM: I have no objection, your Honor.

22 THE COURT: All right, it may be received.

23 (SEC Exhibit No. 4 was received in
24 evidence.)
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DIRECT EXAMINATION (Continued)

BY MR. TIMMENY:

Q Mr. Bloom, again I show you Exhibit No. 4 in evidence, and I invite your attention --

MR. TIMMENY: May I approach the witness again, your Honor?

THE COURT: Yes.

MR. STRUM: May I request, please, Mr. Timmeny, that you speak up? I am having trouble hearing.

THE COURT: Do you want to sit in the jury box? I will have to bounce you out if the jury comes in.

MR. STRUM: I prefer to sit here, your Honor, so I can hear the writing surface.

THE COURT: All right.

MR. TIMMENY: I am laboring under a cold, Mr. Strum, but I will do the best I can.

Q Mr. Blum, I invite your attention to Column 5 --

A Yes.

Q (Continuing) Line 40.

A Yes.

Q Is that the \$313 item we have been discussing?

A Yes, I think we have referred to it as 314, but that looks like the 313,000. That's correct.

Q And that column is head 1972 reversal?

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2 A Correct.

3 MR. TIMMENY: Your Honor, I would like to have
4 this document marked.

5 (SEC Exhibit No. 5 was marked for
6 identification.)

xx 7 BY MR. TIMMENY:

15 8 Q Mr. Bloom, I show you a one-page work sheet that
9 has been marked SEC Exhibit No. 5 for identification, and
10 I ask you if you can identify it (handing)?

11 A I haven't seen this work paper before, but if
12 you will let me look at it for a second I can dope it out.

13 THE COURT: Check it out.

14 I think the question is, can you identify that.
15 Is that something that came out of Geon's files?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right.

18 Why don't you take a look at it.

19 THE WITNESS: This would be a calculation of
20 the -- probably the inter and intracompany profit elimin-
21 ations, and this would be a calculation of the closing
22 gross profit for the East Coast warehouse, I think.
23 Because I see 39-1/2 per cent, and that's about correct.

24 Q Where is that closing gross profit reflected
25 for the East Coast warehouse?

2 A Line 38.

3 Q Column 6?

4 A Column 6, line 38, that's correct.

5 Q Thank you.

6 Now, I also invite your attention to Column 6,
7 lines 4, 5 and 6 --

8 A Yes.

9 Q (Continuing) Do those lines indicate that the
10 \$313,000 figure is then decreased by \$89,000 resulting in
11 a figure of \$223,664 as the total profit elimination intra-
12 company profit elimination relating to the books of Geon
13 Intercontinental Corporation?

14 A Yes, that's how you would book it year to date,
15 that's correct.

16 MR. TIMMENY: Your Honor, I offer Exhibit 5.

17 THE COURT: Is there any objection?

18 MR. STRUM: If I may, your Honor, just one or
19 two questions on vire dire.

20 THE COURT: Certainly.

21 VOIR DIRE EXAMINATION

22 BY MR. STRUM:

23 Q Mr. Blum, do you know by whom, which individual
24 this particular document was prepared?

25 A This looks like Stanley Chin's writing again.

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Q Do you know at what point in time that was prepared?

A Well, this would be the -- this would have to have been done some time in the later part of -- not the late, but the middle part of March, right near the end, because this gross profit calculation reflects the cut-off error that was found on the East Coast warehouse. That was about \$170,000. We never got the 39-5 until that was discovered, and that was something around the end of the first week in March.

MR. STRUM: I have no objection, your Honor.

THE COURT: All right, it may be received.

(SFC Exhibit 5 was received in evidence.)

THE COURT: Do you have some questions, or are you waiting, or what?

MR. TIMMINY: I have just shown a document to Mr. Strum.

THE COURT: All right.

MR. TIMMENY: I would like to have this document marked for identification, your Honor.

(SFC Exhibit No. 6 was marked for identification.)

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DIRECT EXAMINATION (Continued)

BY MR. TIMMENY:

Q Mr. Bloom, I show you a document that has been marked SEC Exhibit No. 6 for identification, and I ask you if you can identify it (handing)?

A This would be a comparative income statement. This was probably a preliminary statement. I don't know at what point this was prepared. This is very early, because I don't even see -- I don't see the disc, I don't see anything in here.

THE COURT: This is covering what year, 1973?

Q 1973, does it not?

A Well, this was really old. I don't know when this refers -- I don't know at what point this was prepared.

THE COURT: But it refers to 1973?

THE WITNESS: Yes, sir.

Q Isn't the document captioned Geon Inter-continental Corporation Comparative Income Statement, December 31, 1973?

A Yes, but I don't know if this a final, or if this is a preliminary. It's impossible for me to tell you that.

Q That appears to you to be a document that was kept in the ordinary course by your accounting department?

1 A Yes. But there's no rule on that, because some
2 preliminary financial statements, if they were really --
3 they would be changed. You see a lot of erasures on these
4 statements where they have just been changed. That I don't
5 know. You can ask me questions about it, I will do
6 what I --

7 Q We're now working with a \$223,000 figure, are
8 we not? Representing the \$313,000 less \$89,000?

9 A That's to recapture the current year, yes.

10 Q Now, the \$223,000 is deducted from the combined
11 net income figure of the Woodbury and the Compton branches --

12 A Correct.

13 Q (Continuing) To give you a net income figure
14 for Geon Intercontinental Corp.; is that correct?

15 A That's correct.

16 MR. TIMMENY: I offer it in evidence, your
17 Honor.

18 MR. STRUM: I have two questions, your Honor.

19 THE COURT: All right.

20 VOIR DIRE EXAMINATION

21 BY MR. STRUM:

22 Q Mr. Bloom, do you know by whom this document was
23 prepared?

24 A I'm sorry, I didn't look at that. I should have

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Bloom-direct

1 looked at the handwriting before. I see Jim McMahon's
2 handwriting, I see Stanley Chin's handwriting, and I think
3 I see -- yes, I do, I see Jim McCormick's handwriting.
4 All three.
5

6 Q Do you know when precisely that document was
7 prepared?

8 THE COURT: He said he didn't. I think he said
9 he couldn't really tell. He thought it was an early --

10 THE WITNESS: It would be very hard for me to
11 tell. When I see the net elimination entry up here of
12 \$223,000, this could be very, very late in coming to a
13 combining. This is not, by the way, a consolidating.
14 If you are under that impression. This is a combining
15 statement of East and West Coast divisions.

16 MR. TIMMENY: We will get to that.

17 MR. STRUM: I have no objection.

18 THE COURT: All right, it may be received.

19 MR. TIMMENY: May I ask one question respecting
20 this document, Exhibit No. 6:

21 The net income figure for Geon Intercontinental
22 is \$1,042,161 as represented on this document, Column 13,
23 line 31?

24 THE WITNESS: Yes.

25 (SEC Exhibit No. 6 was received in

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evidence.)

MR. TIMMENY: Your Honor, I would like to have another document marked for identification.

(SEC Exhibit No. 7 was marked for identification.)

DIRECT EXAMINATION (Continued)

BY MR. TIMMENY:

Q Mr. Bloom, I show you an accounting work sheet marked SEC Exhibit No. 7 for identification, and I ask you if you can identify it (handing)?

A This is the final consolidation for Geon Industries year ending 12/31/73. This is the consolidated income statement.

MR. TIMMENY: It is offered in evidence, your Honor.

MR. STRUM: No objection.

THE COURT: It will be received.

(SEC Exhibit No. 7 was received in evidence.)

BY MR. TIMMENY:

Q Mr. Bloom, does the combined figure from Gian Intercontinental appear in this document?

A Yes, it does. It's combined right here (indicating).

1 Q Column 7, line 35?

2 A That's correct.

3 Q Is that combined figure lected in the
4 consolidated figure at Column 21?

5 A Positively.

6 Q Line 34?

7 A Positively.

8 Q This consolidated figure is \$1,418,008?

9 A Correct.

10 Q Does that last figute, \$1,418,008 correspond to
11 the final net income figure that appears in your audited
12 certified financial statements?

13 A Yes, it does.

14 MR. TIMMENY: Your Honor, I would like to have
15 marked as an exhibit approximately 17 pages.

16 (SEC Exhibit No. 8 was marked for
17 identification.)

18 xx

19 MR. TIMMENY: Just to save time, your Honor, I
20 only intend to offer the first two pages of this exhibit,
21 therefore, unless counsel objects --

22 THE COURT: Well, come on, let's ask a question.
23 We'll take care of that at a recess.

24 Q Mr. Bloom, I show you the document marked SEC
25 Exhibit 8 for identification, and I ask if you can identify

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it (handing)?

A Yes. This is the pro forma balance sheet and the pro forma income statement that were given to Jay Newland for the year 1973 for Geon Industries.

THE COURT: And was given to whom?

THE WITNESS: Jay Newland, at Burmah Oil.

THE COURT: That was at Nurmah Oil.

All right.

MR. TIMMENY: Your Honor, I offer the first two pages of this package, it's the balance sheet and pro forma income statement, into evidence.

THE COURT: All right.

I take it you have looked at them. Do you have any objection?

MR. STRUM: I have no objection, your Honor.

(SEC Exhibit 8 was received in evidence.)

Q Mr. Bloom, does a pre-tax income figure appear on page 2 that is the pro forma income statement?

A Yes, \$3,754,000.

Q Thank you.

I believe you testified yesterday that this was provided to Mr. Newland in November; is that correct?

A That I wasn't certain of. I don't know when --

1 msl8

Bloom-direct

2 I don't think -- it could have been November, it could
3 have been later than that. I'm not sure.

4 Q Well, can you pin it down as to some time in
5 December? Was it any later than December? It certainly
6 wasn't later than the meeting in the Regency; is that
7 correct?

8 A That's correct. Because that's -- no, it was
9 at some time later than the meeting at the New York Athletic
10 Club, because that's the first time that we met Newland.

11 Q But before the meeting at the Regency?

12 A Oh, quite definitely. I'm pretty certain.
13 I think there is a date in the upper left-hand corner.

14 Q Mr. Bloom, directing your attention to the upper
15 left-hand corner there does appear to be a date. Can you
16 make it out (handing)?

17 A I can see 28/73, but I don't know, is that 11/28?
18 Is the original here?

19 Q No, I don't have the original.

20 A I don't know. I can't tell. But it looks
21 like 28/73?

22 Q But in any event, you think it was before the
23 meeting at the Regency?

24 A Oh, I'm fairly certain.

25 Q Mr. Bloom, inviting your attention to page 1 in

ms19

Bloom-direct

1 the pro forma balance sheet, is there a net worth figure
2 in that balance sheet?

3
4 A Yes.

5 Q What is it?

6 A The net worth figure would be \$14,900,000.

7 THE COURT: Have you ever seen those papers
8 before?

9 MR. TIMMENY: They are their papers, your Honor.
10 They were provided to us last night after the close of our
11 session.

12 THE COURT: All right.

13 Is there any objection to receiving these docu-
14 ments?

15 MR. STRUM: No, there is no objection, your
16 Honor.

17 THE COURT: All right.

18 Mark them, please.

19 MR. TIMMENY: Mr. Clerk, I request that you mark
20 these three documents as one exhibit.

21 (SEC Exhibit No. 9 was received in
22 evidence.)

23 BY MR. TIMMENY:

24 Q Mr. Bloom, I show you three documents that have
25 been marked SEC Exhibit No. 9 in evidence, and I ask you if

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2 you can identify them (handing).

3 A Yes, this is the Simpson, Thacher & Bartlett
4 draft of the purchase agreement, that's dated 12/31/73,
5 and it looks like it says draft No. 2, but I don't know if
6 there is a draft No. 1 that we ever received.

7 Q Let me invite your attention to the very first
8 paragraph therein, does it refer to a date?

9 A Purchase agreement dated January 1974, yes.

10 Q I now show you a second document as part of this
11 exhibit and ask if you can identify it (handing)?

12 A Okay. This is Simpson, Thacher & Bartlett,
13 and it's the purchase agreement dated 2/13/74, and they
14 have it marked, it looks like draft No. 4, but, again, I
15 don't know if we have ever seen any intervening drafts.

16 Q Does this also bear a reference to a date in the
17 first paragraph?

18 A Yes, this says February 1974.

19 Q And finally I show you a copy of a third document
20 contained in SEC No. 9 in evidence, and I ask if you can
21 identify it (handing)?

22 A Yes, this is a draft of the Simpson, Thacher &
23 Bartlett agreement dated February 13, 1974. Again it
24 looks like draft No. 4, and it's a notice. This went to
25 the members of the board of Geon Industries, Inc. And

it's the latest draft of the purchase agreement at that point in time. It's on a memo dated February 15, 1974.

Q Does that memo indicate that this draft was sent to the board members?

A Yes, it does.

Q Now I invite your attention, Mr. Bloom --

MR. TIMMENY: First of all, your Honor, I offer these in evidence.

MR. STRUM: I have no objection.

THE COURT: All right, they may be received.

Q I invite your attention, Mr. Bloom, to paragraph, or item 7.2.5 in each of these agreements.

A Yes.

Q Does it contain an earnings requirement that Geon must meet?

A Do you want me to look through each one?

C Please do.

MR. STRUM: I object to the question, your Honor.
The drafts of the contract speak for themselves. As I
understand it --

THE COURT: Well, I don't know what the question is. He just asked him to look at these items, and what is the question after you asked him to look at the requirement?

1 ms22

Bloom-direct

2 MR. TIMMENY: Does it reflect an earnings
3 requirement --

4 THE COURT: Well, what does the contract say
5 about that.

6 THE WITNESS: Yes, I'm looking at the draft of
7 February 13, 1974. There is an earnings requirement of
8 \$3,847,000 pre-tax for the year 1973.

9 Q Look at the earlier drafts, to , Mr. Bloom, and
10 see what the earnings requirements are there.

11 A This I think is the same draft. This is
12 exactly the same. Then 12/31/73, 2 and 7.2-5 has an
13 earnings requirements of \$3,847,000 pre-tax for the year
14 1973, the exact same earnings requirement.

15 Q Isn't it a fact that the \$314,000 error that we
16 have been discussing would have been almost 10 per cent of
17 that earnings requirement?

18 MR. STRUM: I object to the question, your Honor.

19 THE COURT: Would you read the question again,
20 Mr. Reporter.

21 (Question read.)

22 THE COURT: I don't think he need answer that.
23 I guess I can figure that out.

24 Q Mr. Bloom, I invite your attention to Paragraph
25 7.2.6 in each of the draft contracts.

1 ms23 Bloom-direct

2 A Yes.

3 Q Is there a net worth provision in that paragraph?

4 A Yes, there is.

5 Q What is it?

6 A It's \$14 million. In both paragraphs -- both
7 drafts of the agreement.

8 Q Thank you.

9 Mr. Bloom, returning to your study of the account-
10 ing records at your offices on the morning of February 21,
11 while you were reviewing the accounting records did you come
12 up with other matter that might have been erroneous in
13 addition to the \$314,000 we're discussing?

14 A Yes.

15 Q Will you describe that situation, please?

16 A The preliminary earnings figures on some of the
17 branch operating divisions were coming in too low and they
18 were basically too low in the area of gross profit margin.

19 Q Isn't it a fact that with the \$314,000 you had
20 a combined earnings shortfall of about \$700,000 on the
21 morning of the 21st while you were examining these documents?

22 MR. STRUM: I object to the question, your
23 Honor.

24 THE COURT: Can you answer that?

25 THE WITNESS: We did not know the extent of our

1 ms24

Bloom-direct

2 earnings shortfall at that time because the figures were
3 much too preliminary.

4 THE COURT: All right.

5 Q Were there preliminary indications that the
6 amount was \$700,000 earnings shortfall?

7 A Yes.

8 Q And this \$700,000 figure would have included the
9 314 we have been discussing?

10 A That's correct.

11 Q Would this \$700,000 shortfall have brought the
12 company below the minimum income requirement in the acquisition
13 contract?

14 A Yes, that's correct.

15 Q After you reviewed these accounting records
16 yourself with Mr. McMahon you left for the board meeting;
17 is that correct?

18 A That's correct.

19 Q When you left for the board meeting you were
20 50 to 60 per cent sure, were you not? that the \$314,000 had
21 been incorrectly included in earnings?

22 A Yes.

23 Q Now turning our attention to the board meeting,
24 where was the board meeting scheduled?

25 A It was at Kaye Schoeler's office.

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Q Did you go directly to Kaye Schoeler's offices?

A Yes, we did.

Q What time did you arrive there?

A Approximately 2.30.

Q Who was accompanying you?

A Peter Neuwirth.

Q Who did you meet when you arrived at Kaye Schoeler's offices?

A We met with Lou Korman and Jack Friedman.

Q Did you have a conversation with them?

A Yes, we did.

Q Would you tell us about that conversation?

A We indicated to them that we had gotten some very preliminary numbers in from the various operating divisions in anticipation of this meeting, and that although we felt that the numbers were not reliable in any sense of the word, we didn't like the way they looked because it looked like we might have a possible earnings shock. And we had tried to contact them earlier in the day to see if we could postpone the meeting until we were able to do a little more additional work, and we were unable to. And so we phoned ahead and said that we would be in there a little bit earlier.

Q Did you ever indicate to anyone that you told Mr.

1 ms26

Bloom-direct

2 Friedman and Mr. Korman that the situation was scary?

3 A I don't recall. I could have.

4 Q Do you recall testifying before the SEC officers
5 on March 4th, 1974?

6 A Yes.

7 MR. STRUM: Could you give me a page reference?

8 MR. TIMMENY: Page 28. The question isn't
9 much help. I would just like to begin reading from the
10 middle of the answer. I will begin --

11 THE COURT: Wait a minute. If you're going
12 to read anything, read the question then the answer.

13 MR. TIMMENY: I will have to go back some, your
14 Honor.

15 THE COURT: How long are you going to read?

16 MR. TIMMENY: The question is:

17 "Who is we?"

18 He is describing he had come into the meeting.

19 THE COURT: Go ahead.

20 MR. TIMMENY: (Reading:)

21 "Q Who is we? Peter and I --"

22 THE COURT: Read the answer.

23 MR. TIMMENY: "Peter and I. We went into
24 the city at that point and we met Mr. Korman right in rapid
25 succession, I guess, Mr. Friedman and I think just those

two initially. And we said, look, something is crazy. We don't understand it at this point, but it's scary, and what do we do? We didn't have time to really do anything else at this time. Members of the board were on their way to the meeting."

Q Do you recall that question being asked and that answer being given?

A Yes, I do.

THE COURT: All right, we will have to take a two-minute recess.

(Recess.)

THE COURT: Proceed.

BY MR. TIMMENY:

Q Mr. Bloom, who was in attendance at the board meeting on February 21?

A Peter Neuwirth, George Neuwirth, Otto Hays, Jack Friedman, Lou Korman, Robert Barbanell, Russ Morrison. I think that's all.

Q Approximately what time did the meeting get started?

A Very shortly thereafter. 3 o'clock, perhaps, 3.15. Someth ing like that.

Q About how long did it last?

A I think about an hour and a half or an hour and a

quarter or something. Someth ing on that order.

Q Did you report certain matters to the board concerning these accounting problems that had cropped up?

A Yes, I did.

Q Will you tell us what you told the board?

A Well, we indicated that --first of all I discussed the reversal item that hadn't been made, this \$314,000, and I pretty much dispensed with that without very much discussion, because it wasn't germane. That didn't affect the area where we were appearing to have a shortfall of the -- the \$700,000 shortfall was at the branch operations. It really had nothing to do with the \$314,000 at the warehouse. Just you ended up with \$700,000 after correcting the \$314,000.

So that discussion centered about the fact about the branch operating gross profits were coming in much too low, and that we felt that this constituted an error to a great degree, that there were just errors or something omitted, and discussion went on to all of the very obvious things, if a couple of branches had been left out that would account for the whole \$700,000.

Q It might help if I ask you a question.

A Surely.

Q By the time of this discussion weren't you also

1 reporting that the Aircraft Export Division's earnings
2 were off about \$180,000?

3
4 A Yes, but we were far from a completed number on
5 the Aircraft Export Division because we had had consider-
6 able difficulty in accumulating their year-end inventory.

7 Q And your total number in question at this point
8 however was \$900,000, was it not? Or close to \$900,000?

9 MR. STRUM: I object to the question, your Honor.

10 THE COURT: If he knows.

11 Do you know?

12 THE WITNESS: I'm not sure if it was 8-plus or
13 900,000.

14 THE COURT: All right.

15 THE WITNESS: But, yes, it would be in that
16 range.

17 THE COURT: It would be in that range.

18 All right.

19 Q Did you ever indicate to anyone that the problem
20 concerning the \$180,000 earnings shortfall of the Aircraft
21 Export Division was a whopper?

22 A You're asking me to recall a word, and I don't
23 know --

24 THE COURT: You don't recall it?

25 THE WITNESS: I don't recall.

1 ms30 Bloom-direct 124
2 Q Do you recall testifying on March 4th before
3 officers of the SEC?

4 A Yes, I do.

5 MR. TIMMENY: Page 2, your Honor, and Counsel.
6 Beginning with the question at line 2.

7 Q "Q To the total of maybe 700,000.

8 "A To a total of more, about 900,000 total.

9 "Q How did it get from 7 to 9?

10 "A Okay. At that point in addition we
11 had a pre-tax number on our --" it says after vacation,
12 and it should say aviation --

13 "Aviation Export Division that indicated that their
14 gross margins were off to the tune of about \$180,000.

15 "Q Which is what per cent?

16 "A It's a whopper. It's about 4 per cent
17 of their -- it's 4 per cent out of 38 per cent, so it's
18 about 10 per cent of their normal gross profit margin."

19 Do you recall those questions being asked and
20 do you recall giving those answers?

21 A That's correct. Yes, I do.

22 MR. TIMMENY: Incidentally, your Honor. I want
23 to offer this entire transcript as an admission, as con-
24 taining admissions against the interest of Mr. Bloom.

25 THE COURT: If you are going to offer it I want

2 you to mark it. I am not going to read the whole tran-
3 script.

4 MR. TIMMENY: We will mark it and indicate to
5 you --

6 THE COURT: Make a list of the pages you want
7 me to read.

8 MR. TIMMENY: I will do that, your Honor.

9 THE COURT: All right.

10 Q Now, in your experience with Geon had you ever
11 had a year-end problem approaching a shortfall of \$900,000
12 before?

13 A Never.

14 Q Was there any discussion at the board meeting as
15 to whether the earnings shortfall would affect the acquisi-
16 tion?

17 MR. STRUM: I object, your Honor. There was
18 no discussion of an earnings shortfall as implied in Mr.
19 Timmeny's question.

20 THE COURT: Well, I thought the question was
21 whether this matter of this shortfall, if that is what you
22 call it, was discussed in relationship to the possibility
23 of the Burmah acquisition.

24 Is that the question?

25 MR. TIMMENY: That is the question, your Honor.

1 THE COURT: Was it? Do you remember?

2 THE WITNESS: I would say there had to be some
3 discussion at the meeting, yes.

4 MR. STRUM: Well, the burden of my objection,
5 your Honor, is not the nature of the discussion, but Mr.
6 Timmeny in his question characterized it as "an earnings
7 shortfall".

8 THE COURT: Well, I don't know what that means,
9 but there has been a lot of talk, he has mentioned shortfall,
10 and I don't know what it means either, but I won't stop him
11 on his characterization. I want him to explain to me at
12 some point what it is.

13 All right. You have answered the question, yes,
14 there was some discussion.

15 Q Would you tell us about that discussion?

16 A I don't recall a lot of the detail of the dis-
17 cussion, but I am certain the point came up that if in fact
18 we did have this earnings shortfall, then either the deal
19 might be broken or we would have to renegotiate the deal.

20 Q Did you tell the board that you were going to
21 go check these figures further?

22 A Yes, I did.

23 Q Did you tell the board how much time you thought
24 it would take you to check on the figures?
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A Yes, I felt that we might have something more concrete to talk about by some time late Sunday.

Q I'm sorry, I didn't hear that.

A I said that I told the board that we might have something more concrete to talk about by late Sunday, and that we would have everybody working on this stuff, including the Arthur Andersen people through that weekend so that -- in fact, I think at that point we scheduled a board meeting for the following Sunday night tentatively with the hope that we would have enough work done to at least come up with some answers, or find out that the whole thing was just a mistake.

Q Was there any discussion at the meeting to the effect that you would be in a position to contact the Amex by Sunday night?

The American Stock Exchange?

A That I don't recall.

Q Was there any discussion at all of the meeting with respect to contacting the American Stock Exchange?

A I don't recall that, either. I would not have paid much attention to --

THE COURT: Well, that's all right, but you don't recall any anyway?

THE WITNESS: Yes.

1 ms34 Bloom-direct 128
2 Q At the board meeting was there any discussion
3 concerning keeping a watch on the market activity in Geon
4 shares?

5 A Yes.

6 Q What was said in that regard?

7 A There was some discussion either at the very
8 tail end of the meeting, or maybe for a few minutes as the
9 meeting broke up, indicating that the stock should be
10 monitored the next day for any unusual activity, because
11 there's always a concern with the fact that a rumor can
12 get out and that you don't have complete confidentiality.

13 Q All right.

14 Now, who was party to this discussion concerning
15 watching the market activity?

16 A I don't know all the parties to it. I know that
17 Jack Friedman would have been party to the discussion, my-
18 self, because I recall the discussion, perhaps Lou Korman.
19 But I am conjecturing on the others, because I don't
20 recall --

21 THE COURT: You and Friedman?

22 THE WITNESS: Oh, very definitely.

23 THE COURT: Gentlemen, we will take a luncheon
24 recess now until a quarter of two. You can leave your
25 papers here. All right, until a quarter of two.
(Luncheon recess.)

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AFTERNOON SESSION

(1.45 p.m.)

F R A N K B L O O M , resumed

MR. TIMMENY: May I proceed, your Honor?

THE COURT: Please do, yes.

DIRECT EXAMINATION (Continued)

BY MR. TIMMENY:

Q Mr. Bloom, about halfway through the evening of February 21, say approximately 10, 10.30 or so, you had a phone conversation with Mr. Neuwirth, did you not?

A That's correct.

Q And you told Mr. Neuwirth that the \$313,000 item was a definite error, did you not?

Yes, I did.

Q By the time you left the offices to go home you said that was about 12. 15 a.m.?

A Yes.

Q You were absolutely sure the \$313,000 in inter-company profits had been absolutely improperly included in Geon's earnings?

MR. STRUM: Objection, your Honor.

THE COURT: He said it was included.

Could you repeat this statement to me?

MR. TIMMENY: Mr. Reporter, would you read back

the question, please?

(Question read.)

THE WITNESS: Included --

Q The words were, improperly included in Geon's earnings.

A Had absolutely been improperly included in Geon's earnings?

Q Improperly included in Geon's earnings?

A No, I'm sorry, that's not a correct statement.

Q Do you recall testifying before the SEC on March 4th under oath?

A Yes, I do.

MR. TIMMENY: Line 4, your Honor, page 59. Page 59 of the transcript.

Q "Q When you left the building that evening what was your state of mind with respect to the problem? Had you had time to determine there was in fact a problem by then?

A I had time only to determine that this mechanical problem that I mentioned was for sure.

Q The 314,000?

A Yes. Absolutely.

Q What else?

MR. DRAKE: You said for sure. And you

said a definite error a minute ago.

"A This item had been booked incorrectly and that the correct booking of it would result in a \$311,000 deduction in profit.

"MR. DRAKE: This is the bottom line profit.

"A Right down to the bottom line. Now I lost the other part."

Do you recall those questions being asked and giving those answers?

A Yes, I do.

MR. TIMMENY: Your Honor, I offer that portion of the testimony again as an admission.

THE COURT: Well, we know what you are talking about, it is in the record. It is in the offer, you don't need to offer it.

THE WITNESS: May I expand on the answer?

THE COURT: You will get a chance to.

Go ahead and ask your question.

Q Now, on Friday morning, Mr. Bloom, about what time did you arrive in your offices?

A Approximately 9.15 to 9.30 I would think.

Q Did you have a telephone conversation at that time with Mr. John Friedman of the law firm of Kaye Schoeler?

A At the time I first arrived or at any time that

morning?

Q Shortly after you arrived at the office?

A Yes, I did.

Q Would you tell us about that conversation?

A Yes.

I was sitting in Peter Neuwirth's office and we were discussing the allocation of the work load. We were working through that Friday, Saturday and Sunday for the board meeting scheduled Sunday night, and we were talking about allocating which areas would be done by what people.

I then received a phone call, my secretary came in and said that Randy Gromet from the American Stock Exchange was on the phone, and I said, well, please tell him to give you a message or or something and I'll call him back shortly.

She came back and she said, no, he wants to speak to you now.

I said, well, fine, put him on hold and I called Jack Friedman up.

Q Excuse me. My question to you is:

Did you have a phone conversation with Mr. Friedman shortly after you came to the office? Now, this has nothing to do with any phone call from Mr. Gromet.

Do you recall the conversation shortly after

1 coming to the office with Mr. Friedman, a telephone con-
2 versation?
3

4 A Prior to this conversation?

5 Q Yes, prior to the conversation that you had after
6 Gromet called?

7 A No, I don't think so.

8 Q You indicated that your secretary told you that
9 Mr. Gromet, from the American Stock Exchange was on the
10 phone?

11 A Yes. And as I indicated, I asked if I could
12 call him back; she said, no, that he said he had to speak
13 to me, and so I said, fine, and put him on hold and tell
14 him I will pick him up in a couple of minutes. At that
15 point --

16 Q Let me ask you:

17 At that point what did you do, did you call Mr.
18 Friedman?

19 A Yes, I did. While Randy Gromet was on the
20 hold I called Jack Friedman up. I told him that I have
21 call to me from Randy, that he wants to speak to me,
22 I don't know what it's about, and I discussed with him,
23 you know, what can I discuss with Randy at this time?
24 And he said to me, well, what's the position, what do you
25 know today compared to yesterday, or something to that

effect, did we know anything more at this point in time.

I don't know if I discussed the \$311 or 13 or 14,000 dollars with him at that point in the conversation, but I said to him, no, we haven't nearly started to do any of the work that's involved here.

He said, well then, you are not in a position to -- then I gather you are not in a position to make any announcement of any kind or release any information.

I said, absolutely not.

He said --

Q Excuse me. Let's make one point clear --

MR. STRUM: May Mr. Bloom please finish his answer, your Honor?

THE COURT: That's all right. I think I understand that.

What is your question?

MR. TIMMENY: I want to make one point clear, your Honor. I would like to ask this question:

Q Did you or did you not tell Mr. Friedman that you were certain that the \$313,000 item was an error?

A I don't know if I did, but that item would not have given me any point of concern either then or before. And when I elaborate later on I will explain fully to you. I tried one time before.

Q Mr. Friedman told you to tell the Amex that there was nothing to announce at that time; is that correct?

A That's correct.

Q Then you took the call from Mr. Gromet from the Amex?

A Yes.

Q He had been on hold all this time?

A Yes. It was only two or three minutes, something like that.

Q Did you note the time of your phone conversation with Mr. Friedman?

A No, I am sorry I didn't.

Q Focusing on your conversation with Mr. Gromet of the American Stock Exchange, he told you that there was an imbalance of orders in Geon, did he not?

A That's correct.

Q And he asked you whether there was a problem with the Burmah deal, did he not?

A Yes, he did.

Q He asked you if there was a problem at the company to account for the imbalance of orders?

A That I'm not sure. I don't know if he asked directly about the company or if he asked about the Burmah

1 deal. If it was still in reference to the deal.
2 That I'm not certain of. He may have asked me is there
3 a problem with the company that's having an effect on the
4 Burmah deal. I really don't recall.
5

6 Q Well, let's try and pin it down.

7 Is it your testimony that you recall him asking
8 you about the Burmah deal?

9 A Yes, very definitely.

10 Q He asked you about the status of the deal?

11 A Very definitely.

12 Q Did he ask you whether there was anything
13 pending with respect to the deal that would account for
14 the imbalance of orders?

15 A Yes, his question was directed, if I'm not
16 mistaken, towards the inordinate amount of time it took
17 from the time we made the first announcement that we had
18 an agreement in principle until we had a final signed
19 agreement. And I explained to him over the phone that
20 the -- when the agreement in principle was made there was
21 really zero done at that point in time in terms of the
22 form of the deal.

23 In fact, I explained to him that at that point
24 we hadn't even known if it was to be a purchase of assets
25 or a tender offer. That's how raw the original deal was.

1 And that although the deal ended on a friendly handshake
2 and a champagne party afterward, that when it came down to
3 the final negotiations for a purchase contract agreeable
4 to both parties it took an awful lot of work and an awful
5 lot of bargaining down the road, because in fact if you
6 were to compare the first version of the contract that we
7 got from Simpson, Thatcher & Bartlett --

8 Q Is this part of your conversation with Mr.
9 Gromet, or are you explaining something?

10 A Now I'm explaining to you that if you will compare
11 the two contracts you will see that there is a world of
12 difference between the final --

13 Q Stick to your conversation.

14 THE COURT: Just what you told Mr. Gromet.

15 A That's basically what I tried to explain to him
16 over the phone. That the time span involved was that
17 in which the time was spent in hammering out a contract
18 that would be acceptable to both parties.

19 And he asked me if the company had any announce-
20 ment to make this morning, that morning, and I said no, the
21 company has no announcements to make, and then he said to
22 me, well, I hope you are not going to tell me that you are
23 not making an announcement this morning, but that -- and
24 then you will make an announcement this afternoon.

1
2 I said, Randy, the company definitely has no
3 announcement to make today. I specifically made that
4 point.

5 Q You told Mr. Gromet that there were no problems
6 with the Burmah deal?

7 A That's correct.

8 Q And you told Mr. Gromet that there were no
9 problems with the company that would account for this
10 imbalance of trading?

11 A I don't recall if I addressed myself directly
12 to the company or the company in relation to the Burmah
13 deal. That I'm not certain of.

14 Q Again referring to your testimony of March 4th
15 before the SEC officers under oath, page 66, beginning
16 at line 21 -- I'm sorry, beginning at line 18:

17 "Q So when you talked to the people at the
18 American Stock Exchange can you tell me what was
19 the substance of that conversation?

20 "A Yes Randy said to me, I think he said,
21 I have an imbalance of sell orders but it's nothing,
22 you know, nothing spectacular. I think he said,
23 the arbitrage guys would pick up most of it and the
24 spread wasn't too much. He said, is there a problem
25 with Burmah, or, you know, some problem with the

1
2 if he said this before or after, he said there was
3 a lot of concern because of the negotiations of the
4 signing of a definite agreement. It seemed to drag
5 on for an excessive amount of time. And I said,
6 Randy, you have to understand that this agreement
7 was done, this agreement in principle was made on
8 a super friendly basis and hammering out of the
9 contract is another thing completely. That is what
10 takes time.

11 "So then he said, well, he said, are you going
12 to make an announcement today, this morning? And I
13 said, no. The company is not going to make an
14 announcement this morning.

15 "He said, well, I hope you are not going to make
16 an announcement this afternoon. And I said to him,
17 no, we are not going to make an announcement today at
18 all, period.

19 "And I think at that time he said, hold on a
20 minute, and put me on hold for a minute or two, and
21 he said, I got a call from the floor and the --"
22 it's a typo, it should be they -- "let the stock open
23 and it's off a quarter, or something like that, and
24 I said fine, Randy, if we have something definitive
25 to tell you I'll call you up. He knows before the

1 first Burmah announcement was made over the phone for
2 hours any language that was acceptable to him."

3 That's the end of the response.

4
5 Q Do you recall the question that he asked and do
6 you recall giving that answer?

7 A Yes, I do.

8 MR. TIMMENY: Your Honor, at this time I would
9 like to request of counsel for Geon the remaining public
10 announcements through the month of March that we sub-
11 poenaed.

12 MR. STRUM: We gave them to you yesterday.

13 BY MR. TIMMENY:

14 Q Mr. Bloom, one further question with respect to
15 this phone conversation with Mr. Gromet of the American
16 Stock Exchange.

17 A Yes.

18 Q Did you note approximately what time the phone
19 conversation concluded?

20 A No, I didn't. The phone conversation ended
21 on the note that the floor had called him and that the floor
22 had allowed the stock to open, and in fact he indicated to
23 me that there was no point in our discussing anything any
24 further because the stock was only off an eighth or a
25 quarter and it looked like there was nothing spectacular

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2 going on.

3 MR. TIMMENY: Your Honor, I would like to have
4 marked a two-page document.

5 (SEC Exhibit No. 10 was marked for
6 identification.)

xx 7 MR. STRUM: No objection, your Honor.

8 THE COURT: All right, it may be received in
9 evidence.

10 (SEC Exhibit No. 10 was received in
11 evidence.)

xx 12 MR. TIMMENY: I have no further questions of
13 Mr. Bloom at this time, your Honor.

14 THE COURT: All right.

15 Well, Mr. Strum, you are next here. Are you
16 ready to proceed?

17 MR. STRUM: Yes, I am, your Honor.

18 THE COURT: Go right ahead.

19 CROSS EXAMINATION

xx 20 BY MR. STRUM:

21 Q Mr. Bloom, would you please state your educational
22 background and briefly summarize your employment before you
23 came to Geon?

24 A Yes.

25 I have an undergraduate degree from the Baruch

1 School of CCNY.

2 I have a graduate degree from NYU. I'm a CPA --

3 THE COURT: In what? What was your graduate
4 schooling?

5 THE WITNESS: In business and accounting
6 education.

7 A (Continuing) Im a New York State Certified
8 Public Accountant. I work primarily in the area of public
9 accounting.

10 Prior to coming to Geon, except for the year
11 preceding my employment at Geon, I worked for the manage-
12 ment corporation that operates the Brookhaven National
13 Laboratory and the Green Bank Radio Astronomy Observatory,
14 that is a management corporation that is a non-profit
15 organization operated under the aegis of the board of
16 directors from the various major universities around the
17 United States that are involved in research.

18 THE COURT: What is that called, the Association
19 of Universities?

20 THE WITNESS: Associated Universities, yes, sir.

21 THE COURT: Associated Universities.

22 THE WITNESS: Yes.

23 Q Does that pretty much bring you up to your employ-
24 ment with Geon?
25

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2 A Yes, it does. 144

20 3 Q What is your title? What office do you
4 hold with Geon?

5 A With Geon Industries?

6 Q Yes.

7 A I'm financial vice-president and secretary.

8 Q Does Geon Industries presently have an agreement
9 with Burmah with regard to the acquisition of Geon's assets?

10 A Yes, it does.

11 Q Could you just briefly summarize the principal
12 terms of that agreement.

13 A The terms of the agreement are the purchase
14 by Burmah through a U. S. subsidiary of all of the assets
15 of Geon Industries. Geon Industries is a holding
16 company, and all of its assets primarily consist of its
17 investments in its subsidiaries, the stock of the sub-
18 sidiaries.

19 Q Is there presently scheduled a shareholders
20 meeting of Geon at which time the shareholders will vote
21 with regard to this transaction?

22 A Yes, there is. The meeting is scheduled for
23 July 2nd.

24 Q If the shareholders approve of this transaction
25 is it anticipated that the transaction will close shortly

thereafter?

A It should close immediately thereafter.

Q Mr. Bloom, directing your attention toward the latter part of the year 1973, did you have a figure representing what you referred to as your anticipated earnings for 1973?

A Yes, we did.

Q What figure was that?

A Approximately \$3,800,000 pre-tax.

Q 3 million 8 pre-tax?

A Yes, sir.

Q Is that figure set forth anywhere in any documents?

A Yes, it's set forth in the pro forma financial statements that were rendered to Burmah, and it's set forth in the purchase agreement between Geon and Burmah.

Q Do you have at Geon what you refer to as independent profit centers?

A Yes, we do.

THE COURT: What is that?

THE WITNESS: These are separate operating divisions of the company, your Honor.

Q Can you list those, Mr. Bloom, please?

A We have the East Coast warehouse which I have

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also referred to --

THE COURT: You talk about divisions and you talk about subsidiaries and you talk about Geon being a holding company. Are these divisions or subsidiaries?

THE WITNESS: They are both, your Honor. They are divisions that operate as profit centers and subsidiaries.

THE COURT: So Geon is an operating as well as a holding company?

THE WITNESS: No. Geon Industries itself is only a holding company. The divisions are of a subsidiary.

THE COURT: That is what I am trying to get at. And the Burmah deal involves the stock of the holding company.

THE WITNESS: It involves the stock of the subsidiaries held by the holding company, yes, sir.

THE COURT: All right.

BY MR. STRUM:

Q Could you list the individual profit centers that you referred to?

A Yes. The East Coast warehouse which I have also referred to as the Woodbury warehouse, the West Coast warehouse, the East Coast branches, which are actually broken up into some regional groups, the West Coast branches,

1 Geon International Corporation which is an automotive
2 export operation, separate and distinct, American Aviation
3 Manufacturing Corporation, which is an exporter of aviation
4 replacement parts, also separate and distinct, and Geon
5 G.M.B.H., I'm using an abbreviated terminology for it,
6 that's an export company located in Hamburg, Germany.
7

8 Q Now, in your testimony and elsewhere you have
9 referred to gross profit percentages?

10 A Yes.

11 Q Can you explain what you mean when you use the
12 term "gross profit percentages"?

13 A Yes. The gross profit percentage is the
14 percentage of profit achieved on the sale after subtracting
15 from the sale the cost of making that sale, the cost of
16 the merchandise sold. To determine the gross profit
17 percentage for a year, or, conversely, to determine the
18 cost of goods sold for the year, you would take the opening
19 inventory at the beginning of the year, you would add to
20 it purchases, freighting, any other items that go into the
21 cost of the goods sold, and then subtract from that the
22 closing inventory at the end of the year. And the amount
23 that is left is the cost of goods sold during the year.

24 Q Toward the end of the year 1973 did you have as
25 working numbers in your mind in your work papers those

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gross profit percentages that you would need at each one of your so-called profit centers in order to attain your anticipated earnings of \$3,800,000 for the year 1973?

A Yes, we did.

Q What percentage were you focusing on at your East Coast warehouse as that percentage you would need to meet your anticipated earnings?

A Approximately 36 per cent.

Q 36 per cent?

A That's correct.

Q I want to direct your attention to the week, the period of a week immediately prior to the February 21, 1974 board meeting of Geon.

A Yes.

Q I want to focus on that.

Now, during that week did you receive data with regard to how the gross profit percentage was starting to look, starting to shape up at the East Coast warehouse?

A Yes, I did.

Q What did that data indicate as to how it was looking at the East Coast warehouse?

A The original data indicated that we were achieving a gross profit percentage of around 41 per cent or better at the East Coast warehouse.

1 Q Which is approximately 5 per cent greater than
2 the gross profit percentage you needed at the East Coast
3 warehouse to meet your anticipated earnings?
4

5 A Exactly.

6 Q With regard to a \$314,000 error that has
7 received some discussion here, you testified that there
8 came a time when you discovered that indeed there was a
9 \$314,000 error?

10 A That's correct.

11 Q Before that error was corrected, Mr. Bloom, did
12 the making of that error create the data that made it appear
13 as if the gross profit percentage at the East Coast ware-
14 house was --

15 THE COURT: Wait a minute now. I am having a
16 little trouble understanding the question.

17 Did it create? I can't quite follow that.

18 MR. STRUM: I will rephrase my question, your
19 Honor.

20 THE COURT: Thank you very much.

21 Q Did the fact of the error, the \$314,000 error,
22 did that contribute to the appearance of a gross profit
23 percentage in the 40 per cent range?

24 A Precisely.

25 THE COURT: The 41 per cent, I think you said.

1 THE WITNESS: Yes, sir.

2 THE COURT: That I can understand.

3 Including that amount you got up to 41 per
4 cent.

5 THE WITNESS: Precisely, your Honor.

6 THE COURT: And when you took it off you got
7 down to 39?

8 THE WITNESS: 37-1/2, your Honor. Then ultim-
9 ately back to 39.

10 THE COURT: All right.

11 BY MR. STRUM:

12 Q Then you corrected the error?

13 A That's correct.

14 Q The \$314,000 error?

15 A That's correct.

16 Q And as a result of the correction of the error
17 it looked lik the gross profit percentage at the East Coast
18 warehouse was 37 per cent?

19 MR. TIMMENY: Your Honor, I am going to object --

20 THE COURT: Please don't, please don't just
21 repeat what he said. He just told me that. We have
22 had that all out.

23 Q What was the final gross profit percentage
24 attained at the East Coast warehouse after all the audit
25

work was done?

A In excess of 39 per cent.

Q As compared to the 36 per cent that you needed to meet your anticipated earnings for 1973?

A That's correct.

Q 3 per cent higher?

A That's precisely correct.

Q Mr. Bloom, I would like now to turn to another subject. I would like you to direct your attention, if you would, to the events of the morning of February 21, the day of the board meeting.

A Yes.

Q Did you receive any data from Mr. McMahon with regard to the branches?

A Yes, I did.

Q What did that data indicate, Mr. Bloom?

A That data indicated that the branches were assuming in with preliminary gross profits that were substantially less than those we had anticipated and that the branches' gross profits would be off in the neighborhood of 6, 7, 800,000 dollars if that data were correct.

Q On Thursday morning, Mr. Bloom, what was your belief as to the veracity and reliability of that data?

A I thought it was absolutely ridiculous.

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2 Q Can you tell me why you thought it was absolutely
3 ridiculous?

4 A Well, item 1, we have never experienced a
5 gross profit problem either at the warehouses or at the
6 branches in any prior periods.

7 Item 2, we monitor in a mechanical way the
8 approximate gross profit percentages being achieved based
9 on mix by the branches during the course of the year, and
10 there were absolutely no indications that their gross
11 profits would be off that far.

21 12 Based upon their historical growth profits we
13 had reported for the first nine months earnings pre-tax
14 about \$2,900,000.

15 Q The data that you received from Mr. McMahon on
16 Thursday morning, was there any breakdown as to expenses?

17 A No. Expenses were all in one line item.
18 There is no detail available on anything. As a matter of
19 fact, no final inventory figures were set forth in balance
20 sheet form, no intercompany accounts had been reconciled,
21 no account payable accounts had been reconciled.

22 There asn't a section of the balance sheet that
23 was done, there wasn't any of the detail on operating
24 expenses that was done. Nothing was done on the bad
25 debt -- I could go on and on endlessly.

1
2 Q Thereafter you left the premises of Geon and
3 you traveled into New York for the board meeting; is that
4 correct?

5 A Yes.

6 Q You described earlier than the first people you
7 spoke to were Mr. Friedman and Mr. Korman?

8 A That's correct.

9 Q Thereafter the other members of the board arrived?

10 A Yes. Within very short order.

11 Q Would you tell me, please, Mr. Bloom, what you
12 said to the board as best you can recall with regard to the
13 numbers?

14 A I said that we had some very preliminary data
15 that has been accumulated far in advance of any time we
16 would normally try to accumulate this data, and only because
17 of this meeting which was a special meeting. We would
18 never have a meeting concerning any year-end result that
19 early in 1974.

20 I indicated that the data that we had was not
21 believable but because there were such wide discrepancies
22 in it that it was incumbent that we have some discussion
23 about this because they were there to approve the Burmah
24 contract which had an earnings condition in it.

25 Q Did you discuss specifically with the directors

1 the \$314,000 item?

2
3 A The only reason it came up in discussion was
4 that I said that one of the reasons that just strengthens
5 the fact that we thought the numbers were so ridiculous was
6 because here was a silly mechanical error that was made at
7 this stage in the game, and there could be a dozen more
8 like this. And, as a matter of fact, there were other
9 mechanical errors made before we finally got the year-end
10 results.

11 Q So that is it fair to say, Mr. Bloom, that at
12 the board meeting you told them about this \$314,000 error?

13 A Absolutely.

14 Q And you explained to them the consequence of
15 that error?

16 A That's correct.

17 Q Including Mr. Friedman who was present?

18 A That's correct.

19 Q Was there any discussion at the meeting concern-
20 ing the necessity for keeping the conversations that had
21 taken place confidential?

22 A Yes.

23 Q What was the discussion on that subject?

24 A The discussion was that we had some information
25 here that was unconfirmed, and at that point totally

unreliable, and we had a pending transaction of very great import with the Burmah people and so, consequently, anything that went on at that meeting was to be kept in utmost confidence.

Q I take it that at that time a board meeting was set up for Sunday night?

A That's correct. That was based upon my estimate of the time it would take for us to go through some of the major mechanical areas.

THE COURT: What date was that Sunday meeting, do you remember?

THE WITNESS: That would be, I think, the 24th, your Honor. Friday was the 22nd.

MR. STRUM: Yes. That Sunday would be the 24th.

THE WITNESS: I might also add that I stressed to the board at that time --

THE COURT: You mean at the 24th or the 22nd?

THE WITNESS: At the 22nd meeting, that the best we could do by Sunday, the 24th, was to have just covered some of the very big, major areas. That we could not have all gone through anything that I would consider an audit function, and that our other accountants who had come in had not begun their audit work on the two major areas

1 of the company, that is inventory and receivable. That's
2 30 million out of a 34 million-dollar balance sheet.
3

4 Q Mr. Bloom, Thursday evening, as you have testi-
5 fied, you went back to the Geon premises; is that correct?

6 A That's correct.

7 Q Would you tell me specifically what you did when
8 you got there?

9 A The first item I addressed myself to was the
10 \$314,000, and I went back through that to see if I could
11 find out if it had been misposted, perhaps, to another
12 account. In other words, if the entry had actually been
13 properly reversed, because it's a mechanical process that
14 should just occur automatically. As an accountant I can
15 say that. It's hard to explain to somebody else. To see
16 whether it had been done or misposted to another account.

17 Again, because we have such a voluminous general
18 ledger, so many various accounts. And it still could
19 have been sitting, for instance, in an intercompany account.
20 Very easily sitting in one of those accounts, because we
21 have numerous intercompany accounts, and none of those had
22 been reconciled at that point.

23 MR. TIMMENY: I will object to this unless he
24 can tie it to someone else. I don't think we should have
25 his conjecture as to where it could be or couldn't be.

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2 THE COURT: Yes.

3 MR. STRUM: Your Honor, my question, if I recall,
4 was, I was asking Mr. Bloom what he did when he got back.
5 I was not asking --

6 THE COURT: That's right. Well, ask him what he
7 did and tell us what you did when you got back.

8 THE WITNESS: I went through the mechanical
9 process of checking the 314,000 out to the best of my
10 ability that night, and then we went through the --

11 THE COURT: "We" is you, I take it?

12 THE WITNESS: No, I worked with Jim McMahon.
13 I don't deal with the work papers.

14 THE COURT: All right. You worked with Jim
15 McMahon.

16 THE WITNESS: Yes, sir.

17 THE COURT: What did you do with Jim McMahon?

18 THE WITNESS: We then went through and did some
19 of the very obvious things on some of the initial inventory
20 figures that had come in, and that was to see that -- all
21 we had available to us in any detail was the East Coast of
22 the United States, and not all of that.

23 BY MR. STRUM:

24 Q Let me interrupt you for a moment, Mr. Bloom.

25 A Yes.

1 Q Leaving aside the \$314,000 entry which you
2
3 examined, did you address yourself during the course of
4 that evening to the \$800,000 apparent shortfall at the
5 branches?

6 A Only to a portion of that, and we couldn't really
7 address ourselves to it properly. As I indicated, as I
8 started to indicate, the only process I went through was to
9 look for the obvious things, to see if of the branches that
10 we had detail on, if one or two branches, if their closing
11 inventories had not been booked up, because that could wipe
12 out the difference immediately, just like that.

13 Also to see whether some of the accumulated
14 totals that were carried forward on work sheets, if there
15 was just a mechanical footing error.

16 As a matter of fact, I did find one of about
17 \$5000 at that point. But that was just one item that popped
18 off the page.

19 I think I have indicated before that there are
20 certain things that accountants do, and that's after adding
21 up a series of numbers you look at it and say, well, does
22 it make sense, can all of these add up to a million dollars,
23 or can they only possibly add up to \$250,000, something
24 like that.

25 Q You testified that you left the premises of Geon

at approximately 12.15 a.m.?

A Yes.

Q When you left the premises at 12.15 a.m. what was the state of your belief as to the veracity and the reliability of the data that indicated a \$800,000 shortfall at the branches?

MR. TIMMENY: Your Honor, are we going to tie this to some conversation with somebody?

THE COURT: That is a pretty broad question. I think if you want to ask him whatever review he made of this \$800,000 shortfall, did it look to you at 12.15 a.m. when you left Geon, if that is the question --

THE WITNESS: It looked as ridiculous as it did earlier on.

THE COURT: It looked ridiculous.

THE WITNESS: Yes, sir.

THE COURT: All right.

BT MR. STRUM:

Q You didn't believe it.

THE COURT: Well, he didn't say that. He said it looked ridiculous.

Q Did you believe it?

A No, I did not.

Q When you left the premises at 12.15 did you know

1 that Mr. McMahon was a stockholder in Geon?

2 A No, I did not.

3 Q Did you have any discussion with Mr. McMahon
4 about the stock of Geon?

5 A Never.

6 Q Did he tell you that he was going to go home and
7 call his broker?

8 A No.

9 THE COURT: Did you tell me you were secretary
10 of the company?

11 THE WITNESS: Yes, I am.

12 THE COURT: You are secretary?

13 THE WITNESS: Yes.

14 THE COURT: And your company had a transfer
15 agent?

16 THE WITNESS: Yes, sir, Marine Midland.

17 THE COURT: You have annual meetings, do you?

18 THE WITNESS: Yes, sir.

19 THE COURT: And your job as secretary, does that
20 have anything to do with the annual meetings, proxies and
21 this kind of thing?

22 THE WITNESS: Yes, but I wouldn't send or tabulate,
23 that's done by the transfer agent.

24 THE COURT: But do you review the stockholders
25

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list to see who the stockholders are and whether their proxies --

THE WITNESS: No. Because the proxies are mailed automatically by the transfer agent. They're mailed directly back to the transfer agent, and tabulated by them. In fact, we don't even see the tabulation of the proxies until we come to the meeting.

THE COURT: He has a stockholders list, doesn't he?

THE WITNESS: Oh , yes. In fact, we get one quarterly to mail the interim statements to shareholders.

THE COURT: Excuse me, I didn't mean to interrupt. I think maybe we'll take a five-minute recess, gentlemen'

(Recess.)

MR. STRUM: May I proceed, your Honor?

THE COURT: Please do.

BY MR. STRUM:

Q Mr. Blum, you have testified that you spoke on the telephone with Mr. Gromet on Friday morning?

A That's correct.

Q February 22. Prior tyour phone conversation with Mr. Gromet did you have any opportunity to do additional work on numbers?

A No, the only thing that occurred that morning,

A He interrupted me, or, stopped speaking himself

1 at some point. He said, hold on a second, the floor is
2 calling. And he put me on hold for, I would guess a minute
3 or so, maybe less than a minute. And he got back on and
4 he said, either that was the floor, or that was the floor
5 trader calling, they had let the stock open and it's
6 opened off, either an eighth or a quarter, and I guess
7 there's nothing more to talk about.
8

9 And I said, fine, Randy, you know, I'll be
10 talking to you. We said good-bye.

11 Q Did you spend the weekend working with the
12 numbers, Mr. Bloom?

13 THE COURT: Which weekend is this?

14 Q The weekend of Saturday, February 23rd, and
15 Sunday, February 24th?

16 A Yes, I did. All of us did for that matter.

17 Q Did there come a time when you reached some
18 conclusions about the \$8000,000 shortfall?

19 A Yes.

20 Q Would you tell me about that?

21 THE COURT: Well, tell us first when you reached
22 a conclusion.

23 A I would say by some time on Sunday.

24 THE COURT: What was that conclusion?

25 THE WITNESS: The conclusion was that we had a

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1 shortfall in gross profit at the branches because our
2 pricing structure had failed to take into account certain
3 factors. The major one of which was the branches' freight
4 cost which becomes part of their cost of goods sold.
5 Consequently they were achieving a lower gross profit than
6 we thought they were achieving, and that they thought they
7 were achieving.
8

9 THE COURT: Will you tell me in simple terms why
10 that is the case?

11 THE WITNESS: Well, because they sell their
12 merchandise subject to various discount structures, but
13 they sell against basically a fixed list price. And their
14 cost would normally be the cost of the merchandise sold,
15 plus the freight in cost, or the cost to receive the
16 merchandise at the branch location.

17 That's part of the cost of that article. However,
18 their pricing information that they had available to them
19 did not include a freight factor for the cost of bringing
20 that merchandise to the branch since that's not available
21 in any uniform form. It varies with the location of the
22 branch. Consequently their pricing structure was estab-
23 lished without any --

24 THE COURT: I have difficulty comprehending
25 these accounting problems. Wouldn't that mean if they

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1 ms72
2 A Yes, there was.

3 THE COURT: If there wasn't I would be very
4 much disappointed, because I have been listening to it for
5 a long time.

6 Q Did you make a report to the board of directors
7 on that occasion?

8 A Yes, I did.

9 Q Did you relate to them the information we have
10 just gone through?

11 A Yes, I did. It was actually a joint report by
12 Peter and myself.

13 Q Was there any discussion at that board meeting,
14 Mr. Bloom, about the issuance of a press release?

15 A Yes, there was.

16 Q Was one drafted that night?

17 A Yes, it was.

18 Q Was there a press release issued first thing
19 Monday morning?

20 A I don't know if it was first thing Monday morning,
21 but there was a press release Monday morning.

22 MR. STRUM: May I have Exhibit 10, please?

23 THE COURT: This is Exhibit 10?

24 MR. STRUM: Yes, your Honor.

25 Q I show you Exhibit 10. Is this the press release

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Bloom-CROSS

1 that went out on Monday, February 25 (handing)?

2 A Yes, it is.

3 Q Mr. Bloom, with regard to the Burmah-Geon
4 transaction, when did negotiations commence for the first
5 time?
6

7 A At the meeting at the Regency Hotel.

8 Q Which was when?

9 A December 17.

10 Q December 17?

11 A 17 or 18.

12 Q 17 or 18. You testified, I believe yesterday,
13 that there was a handshake On December 18; is that correct?

14 A That's correct.

15 Q You also testified yesterday that no press
16 release was issued until December 20th, is that correct?

17 A That's correct.

18 Q Can you explain the passage of time between the
19 18th and the 20th in terms of the handshake and the press
20 release?

21 A Well, the press relase had to be approved by the
22 people at Burmah, U.K. and that took some period of time,
23 the communication back and forth, until we were able to
24 come up with a release form that was satisfactory to both
25 parties.

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Q Was the offer of price at all involved in that?

A I'm sorry, was the --

Q The offer, the dollar offer that Burmah made, did that have any bearing on the lapse of time?

A The \$36 million?

Q Yes.

A No.

Q Was the --

A I don't think so. I don't think so. I don't think there was any --

23

THE COURT: You say you shook hands on the \$36 million.

THE WITNESS: That's right. They had for authorization at that point in time to close the deal as far as I know.

Q At 36 million?

A That's correct.

Q When for the first time did any of the Burmah operating people come to the Geon premises?

A That was some time in November, as I mentioned, when Jeffrey Gilks and Hraham Roberts came out.

Q That was the first time any operating people from Burmah were at Geon?

A That's correct.

1
2 Q When for the first time did any accounting
3 people from Burmah actually come to the premises of Geon?

4 A After that Thanksgiving weekend, that I'm
5 definite about.

6 Excuse me, Graham Roberts had been to our
7 location as a salesman, you know, probably two or three
8 times over the preceding couple of years, but that's all.
9 He was a salesman for Quinton Hazell.

10 MR. STRUM: If your Honor will bear with me
11 for one moment, I think I'm almost finished with my cross-
12 examination of Mr. Bloom.

13 THE COURT: Well, on that promise I will certainly
14 bear with you.

15 MR. STRUM: I have no further questions, your
16 Honor.

17 THE COURT: All right.
18 Do any of the other gentlemen at the second table
19 have any questions?

20 MR. GORDON: No, your Honor.

21 THE COURT: Are there any questions on redirect
22 examination?

23 MR. TIMMENY: A few, your Honor.

24 THE COURT: All right.
25 -

REDIRECT EXAMINATION

BY MR. TIMMENY:

Q Mr. Bloom, you have just testified a press release went out on the morning of February 25. That is SEC Exhibit No. 10.

A That's the Monday morning, yes.

Q Isn't it a fact that that press release was issued only after you had a meeting with the Amex on that Monday morning?

A That's correct.

Q At that meeting isn't it a fact that you were asked whether or not you understood why the Amex was calling on Friday morning?

A Whether I understood why the Amex was calling on Friday morning? Yes.

Q That's right.

A Yesi

Q Isn't it a fact that at that meeting you had actually stated a very encapsulized version of your conversation with Gromet and Mr. Gromet had interjected and said, wait a minute, Mr. Bloom, I want to tell you about that conversation?

A Perhaps I'm not --

Q Well, isn't it a fact, Mr. Bloom, that you, after

1 you gave a very encapsulized version of the conversation
2
3 Mr. Gromet said, wait a minute, wait a minute, Frank, he
4 said, I asked you very specific questions, I asked you
5 what the status of the deal was, I asked you what about
6 the company activity, the company problems, or any company
7 problems that might explain the unusual market activity?

8 A Yes, because when I was questioned about that
9 conversation -- you're right -- I did give them an
10 encapsulated version, and when Randy interjected other
11 pieces of the conversation I expanded upon the conversa-
12 tion.

13 The reason for that is because I had worked my
14 brains out through the weekend and I was in a very, very
15 poor state Monday morning. Monday morning when I went
16 down to the Amex I barely knew what was going on around me,
17 to be very honest.

18 Q After that telephone call that you had from
19 Mr. Gromet on Friday morning did you call your attorney,
20 Mr. Friedman back and tell him that Mr. Gromet had said
21 there was an imbalance of orders?

22 A Yes. I don't know if I called and spoke to
23 Friedman or to Korman. I'm not sure.

24 Q What did you tell them?

25 MR. STRUM: Your Honor, I'm going to have to

object to this line of questioning with regard to conversations between Mr. Bloom and --

THE COURT: Yes, I think there is a point on that.

Did you do anything after you had the conversation with either Friedman or Korman?

THE WITNESS: Did I do anything further with --

THE COURT: Yes. As a result of the conversation.

THE WITNESS: Oh, no. Nothing at all, your Honor.

THE COURT: All right.

I will sustain the objection.

BY MR. TIMMENY:

Q Returning now to this gross profit percentage at the East Coast warehouse, you said ultimately it turned out to be in excess of 39 per cent?

A That's correct.

Q When did you learn it was in excess of 39 per cent?

A The final gross profit figure?

Q Yes.

A That would be in -- that would be finally wrapped up around the, I would guess, the 10th of March,

1 and I'll locate the approximate time for you because on
2 the 8th of March I told some of the -- on the 8th of March
3 specifically some of the accounting people from Arthur
4 Andersen discovered the cut-off error of about \$170,000
5 at the East Coast warehouse, and I told them, they were
6 working very late that night, and I told them, why don't
7 you fellows go out and buy yourselves a nice dinner, or some-
8 thing, because I was, you know, quite happy at that point
9 in time that they found it.
10

11 THE COURT: Did that reduce the profit?

12 THE WITNESS: No, that increased it.

13 THE COURT: I was talking about the dinner.

14 THE WITNESS: Yes, your Honor.

15 THE COURT: It did. All right.

16 A (Continuing) But that was March 8th specifically.
17 We would be wrapped up on gross profit probably with in --
18 at the East Coast area at least within about two, three
19 days of that time.

20 MR. TIMMENY: Just one second more, your Honor,
21 if you will bear with me.

22 THE COURT: Surely.

23 MR. TIMMENY: I have no further questions,
24 your Honor.

25 THE COURT: Are there any other questions?

1 ms80

Bloom-

2 MR. STRUM: No, I have no further questions,
3 your Honor.

4 THE COURT: All right.

5 I take it there are no further questions.

6 Thank you, Mr. Bloom, you are excused.

7
8 (Witness excused.

9 MR. DRAKE: Your Honor, at this time The
10 Securities and Exchange Commission would call Mr. George
11 Neuwirth.

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2 G E O R G E N E U W I R T H, called as a witness in
3 behalf of the plaintiff, having been first duly sworn
4 by the clerk of the Court, testified as follows:
5

6 THE COURT: You may proceed. By the way, which one
7 of these SEC fellows are you?

8 MR. DRAKE: Michael Drake, your Honor.

9 THE COURT: Michael Drake. All right. Go ahead.

10 DIRECT EXAMINATION

11 BY MR. DRAKE:

12 Q State your name, please, sir?

13 A My name is George Neuwirth.

14 Q What is your address, Mr. Neuwirth?

15 A Beg your pardon?

16 Q What is your address, please, sir?

17 A My home address is 3 Hawthorne Lane, Great Neck,
18 New York.

19 Q What is your occupation, Mr. Neuwirth?

20 A I am chairman of the board of Geon Industries.

21 Q Are you also the chief executive officer?

22 A I am also the chief executive officer.

23 Q Could you just briefly describe, sir, in your own
24 words what your functions are?

25 A Basically, considering my age, I function as an
elder statesman. I am being posted and consulted about all

major decisions and developments in the company. And I am kept posted about the day to day major occurrences.

Q All right, sir. What percent of ownership of Geon's outstanding shares do you have, sir, directly?

A I own a hundred and forty-two thousand shares.

THE COURT: What is that in relation to the company, sir? How much of the outstanding stock?

THE WITNESS: Out of two million, it would be 7 and a half percent, about.

THE COURT: About that. More or less. All right.

Q Now, sir, pursuant to a voting trust do you have voting control of approximately 28 percent of the outstanding shares of Geon?

A No. 28 percent of the outstanding shares of Geon, including my own shares. 28.

Q 28, sir?

A Yes.

Q All right, sir. Now, the shares that you vote pursuant to that trust, who are the record owners of those shares?

A Well, they are owned by my son, Peter, by Otto Hays --

THE COURT: Otto Hays?

THE WITNESS: Otto Hays.

1
2 A (Continuing) And Mike Pisciotta.

3 THE COURT: P-i-x--

4 THE WITNESS: P-i-s-c-i-o-t-t-a.

24 5 Q Are all these people relatives of yours, sir?

6 A Michael is a, if I may say, an adopted relative,
7 because he was fatherless and I knew him as a very young boy,
8 and since then took care of him to the best of my ability.

9 Otto Hays is the son of my deceased sister.

10 Q To your knowledge, Mr. Neuwirth, when was Drexel-
11 Burnham contacted, or, when did they contact Geon concerning
12 any possible acquisition of Geon by Burmah?

13 A It wasn't Burmah who contacted us.

14 THE COURT: He is asking you about Drexel-Burnham.

15 A Yes, they originally, in California, I believe, in
16 San Francisco, they contacted my son Peter.

17 THE COURT: Do you remember about when that was,
18 sir?

19 THE WITNESS: I would say July,

20 THE COURT: Of 1973?

21 THE WITNESS: '73.

22 Q Was it early July, sir, around the first or second
23 of July?

24 A Mr. Drake, I came back from vacation, I would say,
25 around the 1st -- 4th of July.

1 camcg Neuwirth-direct 178
2 Q Was a contract entered into at that time with
3 Drexel-Burnham?

4 A Yes. At that time I don't know, but this was the
5 very first time my son heard of the name Burmah, which was
6 familiar to me I must say.

7 MR. DRAKE: May we have this marked for identifica-
8 tion, please.

9 (SEC Exhibit 11 marked for identification.)

10 MR. DRAKE: May I approach the witness, your Honor?

11 THE COURT: Yes.

12 Q Mr. Neuwirth, I hand you SEC Exhibit 11 marked for
13 identification, which consists of a two-page letter on the
14 letterhead of Drexel-Burnham Co., Inc. reflecting a California
15 address, dated July 2, 1973, addressed to Mr. Peter Neuwirth
16 (handing).

17 A Yes.

18 Q Have you ever seen that document, sir?

19 A I did see it.

20 Q All right, sir. I want to call your attention, sir,
21 to the first paragraph of this document.

22 Now, it specifically refers to Castrol, Inc., and
23 to Burmah, is that correct, sir, Burmah Oil?

24 MR. STRUM: Your Honor, may I suggest that if Mr.
25 Drake is going to inquire with regard to that letter that he

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offer it in evidence first.

THE COURT: Do you have any objection to receiving it?

MR. STRUM: No, I have no objection.

THE COURT: All right, it will be received in evidence.

(SEC Exhibit number 11 received in evidence.)

THE COURT: Now, what is the question about that? It refers to Burmah Oil and somebody else?

MR. DRAKE: And Castrol, Inc.

Q Is that correct, sir?

A I think this is a misnomer.

THE COURT: What is?

THE WITNESS: Castrol.

THE COURT: How do you spell it?

THE WITNESS: Like Castor Oil. It's a composition --

THE COURT: I don't know, it's --

THE WITNESS: C-a-s-t-r-o-l. Castrol.

THE COURT: Castrol.

THE WITNESS: C-a-s-t-r-o-l.

THE COURT: Yes, I see, and you think that is a misnomer?

THE WITNESS: I believe that the man who wrote this letter, Mr. Lederman, somehow confused Castrol at the time.

BY MR. DRAKE:

Q Are they related to Burmah in any way?

A Yes, they are a subsidiary.

THE COURT: I see, Castrol is a subsidiary of --

THE WITNESS: Of Burmah, yes.

Q Mr. Neuwirth, this document here indicates that Drexel-Burnham -- let me just read the pertinent portion, your Honor.

It says "Drexel-Burnham and Co., Incorporated and persons employed by or associated with it, have provided and will continue to provide services in connection with Castrol Oils Inc., or any company or entity affiliated with it or its parent, Burmah Oil Company Limited."

Now, did this mean to you, sir, that Drexel-Burnham had already done ~~some~~ preliminary work concerning Geon, and possible arrangements or a deal with Burmah or Castrol Oil, Inc.?

MR. STRUM: I object to the question.

THE COURT: I don't understand. Did that mean anything to you?

THE WITNESS: No.

THE COURT: All right. It doesn't mean anything to me, either. Go ahead with your next question.

Q Do you know why this letter was sent to Mr. Peter

Neuwirth?

MR. STRUM: I object to the question.

THE COURT: I will let him answer if he knows why it was sent to Peter Neuwirth. Do you know why?

THE WITNESS: Peter was the first contact in California.

THE COURT: And he got this letter?

THE WITNESS: And this letter was addressed, as you can see, to California and not to New York.

THE COURT: All right.

Q Do you know if your son Peter signed this agreement, six?

A I believe --

THE COURT: Do you want to look at it?

MR. DRAKE: This copy was not signed, your Honor.

A I believe this was renegotiated.

THE COURT: You don't think he signed it?

THE WITNESS: I do not believe he signed it.

THE COURT: All right.

Q Mr. Neuwirth, when was the first time that you had a discussion with someone from Burmah?

A That was with Drexel-Burnham.

THE COURT: No, I think his question was, Mr. Neuwirth, when for the first time did you have a discussion with anybody

1 from Burmah Oil?

2 THE WITNESS: Oh, that happened at the Park Avenue
3 office of Drexel-Burnham.

4 Q When was that, sir?

5 A I dare say towards the end of July.

6 MR. DRAKE: Your Honor, at this time I would like to
7 offer Mr. Neuwirth's diary.

8 THE COURT: Mark it for identification.

9 (SEC Exhibit 12 marked for identification.)

10 THE COURT: Is this being used to help refresh Mr.
11 Neuwirth's recollection, or what?

12 MR. DRAKE: Yes, sir. Both. Not only to refresh
13 his recollection, but also it contains certain erasures that
14 I want to ask the witness about.

15 THE COURT: Well, ask him about that, and I will see
16 if I will receive it into evidence.

17 MR. STRUM: I would also request, your Honor, if Mr.
18 Drake proposes to use it to refresh Mr. Neuwirth's recollec-
19 tion, that he establish that his recollection needs refreshing.

20 THE COURT: All right.

21 BY MR. DRAKE:

22 Q When did you meet Mr. Roberts, sir?

23 THE COURT: Wouldn't that diary refresh your recol-
24 lection as to the date you met this fellow from Burmah Oil?
25

1 THE WITNESS: I didn't keep a very precise diary.
2
3 Mr. Drake and my counsel asked me yesterday for the diaries.
4 I didn't ever believe that they will be turned over to you.
5 If there are erasures, it has absolutely nothing to do with
6 you or the SEC.

7 THE COURT: He didn't ask you --

8 THE WITNESS: I didn't know they would wind up in
9 your hands. I didn't have the vaguest idea.

10 THE COURT: Well, let's not worry about that, Mr.
11 Neuwirth. The question is would looking at that diary help
12 refresh your --

13 THE WITNESS: It might.

14 THE COURT: Well, take a look at it and see if it
15 refreshes your recollection as to when you first saw somebody
16 from the Burmah Oil Company at the offices of Drexel-Burnham,
17 if that's the name. Take your time, Mr. Neuwirth.

18 THE WITNESS: Yes, it does. I have something here.

19 THE COURT: All right. That refreshes your recol-
20 lection. Did you indicate the date, sir?

21 THE WITNESS: It says --

22 THE COURT: Don't tell us what it says.

23 THE WITNESS: It says simply the word "Burmah" 10
24 o'clock, July 9.

25 THE COURT: That is what he wants to know.

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July 9. And that refreshes your recollection that that was the date that you went over to Burnham and you saw somebody from Burmah Oil.

Q With whom did you meet that day, sir?

A I met with -- I didn't know the names at that time, names, cards were not exchanged, and names were not communicated. But I know I met with Max Roberts, and the other Australian fellow, I have his name here, can I look it up? I have his name.

THE COURT: Surely, if it refreshes your recollection.

A Campbell Anderson.

THE COURT: It sounds like a Scotsman.

THE WITNESS: No, he is an Australian. Campbell Anderson. And perhaps there was somebody else from Burmah, but I do not remember.

Q All right. Now, who were these individuals?

A I know now, I didn't know then. One is the president of the American Subsidiary of --

THE COURT: Maxwell Roberts?

THE WITNESS: That's Maxwell Roberts. And the other one was a corporate development man. He was in charge of corporate development.

Q What was discussed at this meeting, sir?

A Nothing.

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Q Nothing was discussed?

3

A Nothing. It was a --

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THE COURT: You were looking at them and they were looking at you; is that right?

6

7

THE WITNESS: Your Honor, they wouldn't even exchange cards.

8

THE COURT: That was terrible of them.

9

10

11

THE WITNESS: I have never had such a situation in my long life. But nevertheless they refused to exchange cards. And I didn't know their names.

12

THE COURT: How long did the conversation last?

13

14

THE WITNESS: I would say 11, quarter past 11 to noon.

15

THE COURT: They didn't take you to lunch?

16

THE WITNESS: No. We went to lunch without them.

17

THE COURT: Who is we? Were you with somebody?

18

19

20

21

THE WITNESS: Yes. It was Frank, my son Peter, and the fellow, Lederman, from Drexel-Burnham, California, and we went to a business club, a bankers club here somewhere on Park Avenue. That Drexel-Burnham are members.

22

23

Q You don't recall anything that was discussed at that meeting, Mr. Neuwirth?

24

25

A Mr. Drake, I remember the meeting pretty well. It was platitudes.

1
2 Q Well, why was the meeting held, sir?

3 THE COURT: I take it Drexel-Burnham wanted to meet
4 somebody from Burmah Oil Company.

5 THE WITNESS: They were the marriage brokers. They
6 were the marriage brokers. It was a first get-together,
7 perhaps sizing each other up. Although really it was --

8 THE COURT: Well, don't, you have answered the ques-
9 tion.

10 Q Mr. Neuwirth, what I am trying to drive at, sir,
11 is, that Geon had the contract with Drexel-Burnham, not
12 Burmah; is that correct?

13 MR. STRUM: Object, your Honor.

14 THE COURT: I don't think it makes any difference.
15 It doesn't make any difference. All I know is that Drexel-
16 Burnham felt they could make a buck somewhere along the line
17 by having you fellows meet the people from Burmah Oil.
18 That is the impression I have. And all you did, you went
19 there and looked at each other and they didn't take you to
20 lunch.

21 THE WITNESS: No, sir.

22 THE COURT: All right. I have the picture.

23 Q Was there an arrangement to meet again at the end of
24 this meeting, Mr. Neuwirth?

25 A Would you speak a little louder, sir?

1 camcg Neuwirth-direct 187
2 Q Did you make any arrangements with the people from
3 Burmah to meet them again?

4 A No.

5 Q When did you next meet with a representative of
6 Burmah, sir?

7 A The next time?

8 Q Yes, sir.

9 A I would say it was a social affair, and I --

10 THE COURT: He asked you when, sir.

11 A When? May I consult my diary?

12 Q Yes, why don't you consult your diary, sir.

13 A I don't see anything.

14 Q Sir, look around August 3, 1973.

15 A Yes.

16 Q Is there a notation down there --

17 A Yes, you're right.

18 THE COURT: Was that the next time you saw anybody
19 from Burmah?

20 THE WITNESS: Yes. I'm sorry, I have very poor sight.
21 I didn't mean to --

22 THE COURT: Take your time. That's all right.

23 Q Who did you see that day, sir?

24 A Well, you see the name Max. Very early after that
25 original meeting we wanted to avoid the name Burmah within

our company, and outside, and we gave it a code name, "Max."

Q Why would you want to avoid that, sir?

A Because I --

THE COURT: Why did you think -- after all, as I get the picture on July 9 you just went and looked at each other and they wouldn't even take you to lunch. Why did you get so interested in this that you adopted a code name "Max."

THE WITNESS: For me "Max" it became later -- it became a code name. Whether it was already at this time I --

THE COURT: At August 3. Do you remember the circumstances?

THE WITNESS: I don't even remember this, I'm sorry, I wouldn't tell you where this lunch was, and I don't remember.

Q So you had lunch with Max Roberts?

A I would say it's written in my diary. My secretary wrote it in.

Q What was discussed at this lunch, sir?

A Again, it was strictly a social lunch and nothing was discussed.

Q Was business discussed, Geon's business?

A I would say they talked perhaps a little about themselves.

THE COURT: Who did? Geon, or --

THE WITNESS: No. I would say Burmah.

1 THE COURT: Burmah talked about themselves?

2 THE WITNESS: About what they are doing. At that
3 time we still had no positive identification with whom we
4 were talking.
5

6 Q Who was there, sir, at this meeting? This lunch?
7 Who was there?

8 THE COURT: Was Roberts there, Max Roberts?
9 If you remember.

10 THE WITNESS: I am very sorry, I really don't
11 remember this lunch. I remember subsequent dinners --

12 THE COURT: Who was with you from --

13 THE WITNESS: I never go alone, your Honor.

14 THE COURT: Well, who was with you?

15 THE WITNESS: Normally it would be either Frank
16 Bloom or it would be my son, Peter, who at that time was most
17 of the time in California. In all honesty I have no recol-
18 lection of this lunch.

19 Q Did you express at that meeting any interest you had
20 of disposing of Geon or Geon's assets?

21 A Certainly not.

22 Q Do you specifically remember that?

23 THE COURT: I guess he does. He says he didn't.

24 MR. DRAKE: Well, I am just trying to find out that
25 specific point.

1 A This was made premature before any serious --

2
3 THE COURT: No, the question is did you indicate at
4 that lunch whether or not Geon was for sale? And you say no;
5 is that right?

6 THE WITNESS: I wish to amend that statement. I
7 don't remember the lunch. Consequently I really cannot
8 remember whatever was discussed.

9 Q All right. Now, when was the next meeting you had,
10 sir? Did that meeting end with any plan to meet again?

11 A I believe the next meeting was organized by Mr.
12 Gavrin at the Harvard Club.

13 Q Was this about the third week in August, sir?

14 A Will you tell me when it is, because you obviously
15 have scanned it.

16 Q You were in the courtroom yesterday, I believe,
17 when Mr. Bloom testified that there was a meeting that he
18 thought was about the third week in August. Do you remember
19 that?

20 A Yes, I was here. Third week in August -- I have
21 nothing on the 3rd -- you know, this diary is not really a
22 professional diary.

23 THE COURT: Well, you have told us that. I gathered
24 that. I think we understand that But you do remember going
25 to the Harvard Club?

1 THE WITNESS: Yes, I certainly do remember.

2 THE COURT: Mr. Bloom said that was about the third
3 week in August. Would you go along with that?

4 THE WITNESS: That escapes me, the date, but I
5 remember the meeting at the Harvard Club.

6 THE COURT: All right.

7 Q Did you ever instruct Mr. Bloom to prepare a five
8 year projection to give to Burmah, or did you agree with --

9 A So early?

10 Q Yes.

11 A I doubt it.

12 Q Do you know if in fact he did give them five year
13 projections at that --

14 A We did give them five year projections, but whether
15 that has occurred at this particular time I cannot recall.

16 Q Did you hear Mr. Bloom testify to that respect
17 yesterday, sir?

18 A Well, I have --

19 MR. STRUM: I object to that question, your Honor.

20 THE COURT: Well, no, all I am trying to do is see
21 if I can find out the facts. As I recall Mr. Bloom's testi-
22 mony there was talk about these five year projections in the
23 third week in August at their meeting at the Harvard Club
24 which was about late August or early September.
25

THE WITNESS: Yes, I would say somewhere in there.

THE COURT: I think the important question is when you met at the Harvard Club do you remember who you met there?

THE WITNESS: Yes. Here was again Mr. Roberts, and I believe --

THE COURT: He is the Australian.

THE WITNESS: Mr. Roberts is an Australian himself.

THE COURT: And Anderson?

THE WITNESS: And perhaps on their side there was Gavrin who was the marriage broker, so to say, and he, I think, hosted the party, and that was my party. I don't remember whether there was a third member --

THE COURT: What do you mean it was your party?

THE WITNESS: It's not my club.

THE COURT: It's not your club.

THE WITNESS: No, it's Mr. Gavrin's club.

THE COURT: All right.

BY MR. DRAKE:

Q Do you know whether or not Mr. Gavrin had the projections before the meeting, or was it given to him after the meeting?

A To the best of my recollection I do not think these projections were given to anybody at that meeting.

1 THE COURT: You are not entirely sure.

2 THE WITNESS: To the best of my ability to recollect.

3 THE COURT: All right.

4 MR. DRAKE: Would you mark this, please.

5 THE COURT: I don't know what it is. Is there
6 any objection to it being received?

7 MR. STRUM: I have no objection to that, your Honor.

8 THE COURT: All right, we will receive it in evidence
9 and save time.

10 (SEC Exhibit 13 received in evidence.)

11 BY MR. DRAKE:

12 Q Mr. Neuwirth, let me show you, sir, SEC Exhibit 13
13 in evidence, which is on the Geon letterhead, dated August
14 13, 1973 to C. Campbell Anderson from Frank Bloom (handing).

15 A I remember quite a few -- I didn't see this letter,
16 by the way.

17 Q Did you know that Mr. Bloom was sending out a letter
18 like that?

19 A Yes, yes.

20 Q You knew that, sir?

21 A Yes.

22 Q That is on August 13; is that correct, sir?

23 A Yes, it is.

24 Q All right, sir.

1
2 A I am very sorry, but I --

3 Q All right. Now, Mr. Neuwirth, this letter indicates
4 that Geon's furnishing Burmah with some 13 different items
5 of information; is that correct, sir?

6 A Yes.

7 MR. STRUM: Your Honor, the letter says what it says.

8 THE COURT: All right, he answered that.

9 Q And it does include, does it not, Mr. Neuwirth, a
10 five year projection?

11 A That's the first item I think.

12 THE COURT: Right, he saw that.

13 A It's the very first item.

14 Q Concerning the meeting, does that letter refresh
15 your memory, sir, as to whether or not they had the five
16 year projections at the third meeting in the third week of
17 August?

18 THE COURT: I don't think that's what Mr. Neuwirth
19 said. He said he wasn't sure whether the five year project
20 were sent out before the meeting or not, that's what he said
21 before. But you can ask the question, did they discuss these
22 five year projections at the Harvard Club.

23 THE WITNESS: They did not discuss them. They merely
24 requested them.

25 THE COURT: You don't really recall?

THE WITNESS: I don't recall. They may have requested them.

THE COURT: They might have had them ahead of time, too, mightn't they? This letter is dated August 13.

THE WITNESS: When was the meeting.

THE COURT: The best we can make out is late August or early September.

THE WITNESS: Then I would say they must have had it.

THE COURT: But you have no recollection?

THE WITNESS: Naturally.

THE COURT: All right.

BY MR. DRAKE:

Q At the conclusion of the meeting the third week of August was another meeting planned, sir?

THE COURT: Is this after the Harvard Club?

MR. DRAKE: Yes, sir.

A There was a meeting at the Athletic Club, 59th Street.

Q When was this meeting, sir?

A Do I have it?

Q When was that meeting planned, sir?

A I simply received an invitation somebody said are you available on that day, and I said, yes, and it was a dinner, yes. I remember it well.

1
2 Q Was this still under the code name "Max"?

3 MR. STRUM: I object to the question. I don't know
4 what "this" refers to.

5 Q The various meetings and discussions and the docu-
6 ments given to Burmah.

7 THE COURT: Wait, I must sustain the objection to the
8 question. As I understand all Mr. Neuwirth said was that they
9 had this name "Max" --

10 THE WITNESS: We coined it.

11 THE COURT: (Continuing) Within the company. Well,
12 you didn't have much trouble coining it, since you had this
13 fellow Max Roberts --

14 THE WITNESS: Right. Right. A genius who --

15 THE COURT: But you just had this so the boys in
16 Geon wouldn't get on that you might be having negotiations
17 with some other company?

18 THE WITNESS: Exactly, your Honor.

19 THE COURT: Sure. I understand now.

20 THE WITNESS: By the way, without asking us they
21 also had a code name for us.

22 THE COURT: They had a code name for you?

23 THE WITNESS: Yes.

24 THE COURT: What did they call you?

25 THE WITNESS: You won't believe it. "Banker."

1 THE COURT: Banker? They called you Banker?

2 THE WITNESS: Yes.

3 THE COURT: Well, you must have been quite flattered.

4 THE WITNESS: I was flattered.

5 THE COURT: All right. Well, he is asking you
6 about this meeting at the New York Athletic Club.

7 THE WITNESS: We were introduced there to a financial
8 vice president -- na, a financial man by the name of Keane,
9 Mr. Keane. I think I met him there for the first time,
10 to the best, again, of my recollection.

11 BY MR. DRAKE:

12 Q Let's back up, sir.

13 When was the meeting at the New York Athletic Club?

14 A Do I have it in here to make my work easier?

15 THE COURT: They don't know. But it would be after
16 August 13, wouldn't it?

17 Q Do you have any knowledge, sir? You don't recall?

18 A The date I'm not sure of, no. But I remember the
19 fact.

20 Q Was it sometime in September?

21 A Mr. Drake, I would say something, but I really
22 don't know.

23 THE COURT: You don't remember.

24 THE WITNESS: I don't remember the date. I remember
25

the meeting.

THE COURT: All right.

Q Prior to, let's say October 15, 1973, had representatives of Burmah been to Geon out at Woodbury?

THE COURT: If you know.

A I think the people, the English people from Burmah came later than October.

THE COURT: Well, the answer is, you **don't** know. It would have been before October 15?

THE WITNESS: I don't know.

Q You don't know, is this your answer, sir?

A Whether anybody from Burmah was in our place before October 15? Is that your question?

THE COURT: That is the question.

A What kind of people.

THE COURT: Any kind of people.

A We have technicians, we had accountants, we had ernst and ernst with their auditors.

THE COURT: Yes, but the question is a very simple one: If you recall, did any of these people from Burmah go to Woodbury before October 15, if you know?

THE WITNESS: I don't know.

THE COURT: You don't know. All right.

Q Was there another meeting in the middle of October,

1
2 sir?

3 A I left for London, I know, October 15.

4 Q You left for London on October 15?

5 A Yes, I know this.

6 Q Prior to your going to London was there a meeting
7 with representatives of Burmah?

8 A Mr. Drake, I go to London and to -- there was a
9 motor show at that time in London, and I have attended this
10 motor show.

11 THE COURT: I think, Mr. Neuwirth, the question
12 was, before you went to London and after the meeting at the
13 New York Athletic Club did you have any meetings in New York
14 with the Burmah people?

15 THE WITNESS: No. No.

16 THE COURT: You don't think you had?

17 THE WITNESS: I don't think I had.

18 Q You were present in the courtroom when Mr. Bloom
19 testified, and I think you testified insubstance that at some
20 meeting in middle or late October that Burmah expressed its
21 preliminary interest in Geon?

22 MR. STRUM: Your Honor, I am going to object if the
23 question asks Mr. Neuwirth to agree or disagree with --

24 THE COURT: No, he isn't asking that. He is just
25 doing that to see whether that refreshes Mr. Neuwirth's

recollection, I take it.

MR. DRAKE: Yes, sir.

THE COURT: That is all he is asking. He is not asking him to agree with him.

Does that refresh your recollection as to whether there was a meeting with these Burmah people before you went to England?

THE WITNESS: There would be a meeting without me being present.

THE COURT: All right.

THE WITNESS: I am in another building.

THE COURT: Very good.

Q Now, were you at any meeting where Burmah had expressed that they had a preliminary interest in Geon, sir?

A Obviously these dinners we ate at the Harvard Club, or we ate at the Athletic Club are per se indications that these people would like to pursue with us conversations regarding the possibility of a, as the English call it, a deal.

Q All right, sir.

Now I ask you to look at your diary for October 10, 1973.

A There is an erasure here.

Q Can you make out something, sir, that --

A Yes.

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Q (Continuing) That says Burmah?

A Wall Street. Obviously it was cancelled.

Q It says "Wall Street," --

A Oh, no, I know the answer.

Q All right, sir.

A Wall Street. I think it says "Analyst" or something. We had a custom to invite four or five analysts, Wall Street analysts from brokerage houses to a lunch. It usually was in the city here at Laurent, and the minute I see Wall Street, I mean analyst.

THE COURT: That indicates that you --

THE WITNESS: That was cancelled for some reason or another.

Q Is that the reason why it was erased, because it was cancelled?

A It was erased because the meeting hasn't taken place.

Q Well, who made the --

A Because for some reason somebody couldn't make it, or I couldn't make it. It was postponed.

THE COURT: How often do you have these meetings with the analysts?

THE WITNESS: I have altogether, I believe, not more than three or four meetings of analysts of very well known

brokerage houses.

THE COURT: Three or four times in how long a period?

THE WITNESS: Oh, this started somewhere last year, it was recommended to me by the automotive analysts of Loeb Rhoades.

THE COURT: And so you would meet --

THE WITNESS: He would indicate which people I should invite so to familiarize with them with out company.

THE COURT: I see. And so you are now you are now telling us that since sometime last year you might have had three or four meetings --

THE WITNESS: Not more.

THE COURT: (Continuing) With these analysts from these brokerage firms?

THE WITNESS: Yes. Your Honor, before that we used to have large meetings which were organized by Loeb Rhoades, in Boston, in Chicago, in New York, in San Francisco and LA, to which Loeb Rhoades would invite a number of investors, not their competitors, but people --

THE COURT: Well, this was to pick your brain?

THE WITNESS: I never had a prepared speech. And I told them that I am very familiar with the philosophy of the company, but when it comes to numbers and information of that

sort, I am not very good at it, and Mr. Frank Bloom was present at all times.

THE COURT: All right.

Q Mr. Neuwirth, do you recall testifying before The Securities and Exchange Commission?

A I sure do, Mr. Drake.

Q Where you testified that you had avoided talking to analysts for a year? Do you remember testifying to that effect, sir?

MR. STRUM: Your Honor, I am going to object to the question.

THE COURT: I think the question is sort of pretty vague. If you find some place in the SEC --

MR. DRAKE: All right, sir. This is page 38 of --

THE WITNESS: Now, I know what I said. Excuse me.

THE COURT: All right.

THE WITNESS: I know. Pardon me, Judge. All right. What he is referring to, Mr. Drake, is that in the past when our company, like in the --

MR. STRUM: Excuse me, if I may interrupt, your Honor.

MR. DRAKE: Page 38, your Honor.

THE COURT: He said page 38.

THE WITNESS: I know exactly what you are asking me.

1 Q All right, so my questin was, I think the question
2 there was, so you say there was a deluge of phone calls, and
3 your answer was, we have one common switchboard for Geon
4 International and Geon Intercontinental. These are the two
5 major companies. We have one common switchboard and the
6 telephone was coming in like crazy. I really don't think
7 that I have had the telephone calls, because for months now,
8 for a year I haven't bothered talking to analysts, mostly
9 analysts who used to call us, because I am not really, I
10 don't really, I'm not really a financier, I am not too well
11 versed in matters of finance, I have never been and I believe
12 Frank Bloom can much better answer analysts' questions than I
13 can.
14

15 Consequently, over the last year or year and a half
16 all these calls which were addressed to me were usually
17 shuttled over to Frank's room.

18 A That's correct.

19 Q All right, sir. But you did have an analysts'
20 meeting scheduled for October 10, 1973; is that correct, sir?

21 MR. STRUM: Well, your Honor, I would --

22 THE COURT: I think there is nothing inconsistent
23 with all this. The witness says he does, Loeb Rhoades got
24 him to have these meetings with the analysts, and as I gather
25 the testimony you tell them about the philosophy of the

company and Mr. Bloom answers any questions about the figures.

THE WITNESS: Right.

THE COURT: All right.

MR. DRAKE: Well, your Honor, while we are on the subject I think we can show that Mr. Neuwirth had a meeting with analysts on October 14 and --

THE COURT: Well, he testified a few minutes ago that he thought since Loeb Rhoades had started this thing sometime in 1973 he had about four of them.

THE WITNESS: Yes.

MR. STRUM: I might point out, your Honor, that the testimony adverted to referred to receiving telephone calls from analysts.

THE COURT: That has nothing to do with this. Yes, I don't ~~blame~~ you for having somebody else answer calls from analysts. That must be very bad.

THE WITNESS: Yes. In the beginning I could cope with the subject.

THE COURT: Well, you had better stop while you are ahead. You told us you just know about philosophy. You don't know what analysts want to know about?

MR. DRAKE: I think we want to go into that, your Honor, that is what I am trying to get to.

Q Let's back up, Mr. Neuwirth, and let me ask you,

1 Mr. Neuwirth, what procedures did Geon have concerning your
2 and other corporate officials' contacts with analysts and
3 brokers concerning important corporate developments?
4

5 THE COURT: Is this before the Loeb Rhoades?

6 MR. DRAKE: Yes, sir.

7 Q Let's say back in July 1973.

8 THE COURT: Well, he doesn't remember when Loeb
9 Rhoades told him about this. Do you remember when Loeb Rhoades
10 got in touch with you and then said they wanted you to talk
11 to these analysts?

12 THE WITNESS: They had a very competent automotive
13 analyst, and we had a very good relationship with him as it
14 is because at one time I saw a write-up by this analyst.
15 This was the document which I said to myself, if this fellow
16 is so smart I want to know him, and I got to know him and
17 through him I became the customer of Loeb Rhoades.

18 THE COURT: What was his name?

19 THE WITNESS: Can I ask Frank to help me, please?

20 THE COURT: Well, if you don't remember, you don't
21 remember. All right. I am sure he will be able to help out--

22 THE WITNESS: Mario Gabelli.

23 THE COURT: All right.

24 BY MR. DRAKE:

25 Q My question was, you don't recall any procedures,

1
2 Geon procedures?

3 A What's a procedure?

4 THE COURT: He is asking you whether Geon had any
5 procedures as a company for talking to analysts?

6 MR. DRAKE: And brokers?

7 THE COURT: And brokers, people who were interested
8 in the stock.

9 MR. DRAKE: Yes.

10 A In the beginning there were very few people with
11 whom I had a personal contact. They would talk to me. But
12 the minute it came to figures I told them, you know that I
13 don't know the figures, and we always transferred these
14 calls to Frank Bloom who just knew exactly what to tell them
15 and what not to tell them.

16 Q Do you know Mark Boyer?

17 A I know Mark Boyer.

18 Q Who is Mark Boyer?

19 A Mark Boyer is an analyst from Coenen and Company.

20 THE COURT: From whom?

21 THE WITNESS: I don't know how to pronounce it
22 properly. C-o-e-n-e-n.

23 MR. STRUM: I might help on that, your Honor.
24 It is Coenen and Company.

25 THE COURT: All right.

1
2 A Yes, I know him.

3 Q And you had a meeting with him back in July of 1973;
4 is that correct, sir?

5 A Can you get me the date?

6 Q About July 27?

7 A All right, sir, but you will see here --

8 THE COURT: No, the question is -- don't tell us all
9 that. Do you remember having a meeting with --

10 THE WITNESS: No, I didn't. He just told me he will
11 be at the other company in the other building.

12 Q Did he come by and see you?

13 A I don't remember, but the meeting wasn't really with
14 me. The meeting was with Intercontinental.

15 THE COURT: All right.

16 Q All right, sir. I don't mean to be unduly repeti-
17 tive, I just want to be sure we have got it clear.

18 To your knowledge there were no set procedures for
19 Geon to handle the discussions with analysts and brokers --

20 A Yes, we had a procedure personified by Mr. Frank
21 Bloom and --

22 THE COURT: Well wait a minute. You have said the
23 procedure, as I understand it, was if these fellows were
24 calling you they would be promptly transferred to Bloom.

25 THE WITNESS: I would say, hello, hello.

THE COURT: I know, but that's not hardly a procedure.

I think the question he is asking you is whether Geon asked the company totally apart from your own procedure did Geon as a company have any internal procedures for handling calls from brokers and analysts who were trying to find information about the company? Totally apart from you and Mr. Bloom.

Were there any other procedures that the company had.

THE WITNESS: If the company had any I don't know about them.

THE COURT: You don't know about them. Well, that is the answer then, he doesn't know about them. You have got that. All right.

MR. DRAKE: All right, sir.

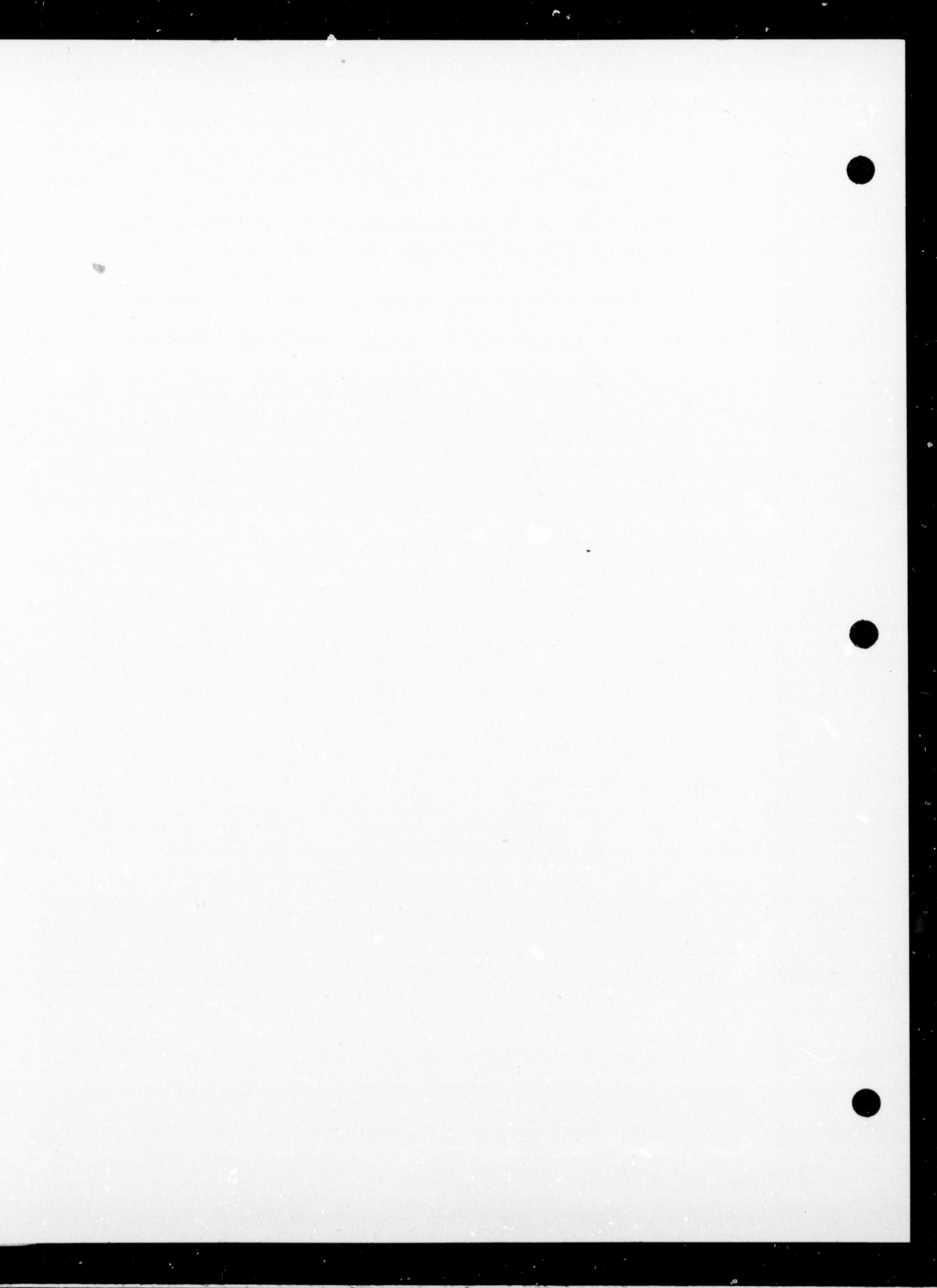
Q Mr. Neuwirth, when did you make plans for this trip to go to England, sir?

A Mr. Drake, I usually go every year around October 1, or about. Last year, in '73, for reasons, perhaps the reason being Max, I went October 15 last year. October 15. I know this date.

Q How long prior to October 15 did you know you were going sir?

A I knew it, I planned my trips. It's automatic. It's for the auto show. I know the auto show --





1
2 THE COURT: And the auto show is in Earl's Court in
3 London.

4 THE WITNESS: Yes. That's part of our business.
5 And that started about the 15th I would say. 15th, 16th.
6 And it lasts for ten days.

7 THE COURT: And that is a fixture, is it, every
8 October, they have an auto show?

9 THE WITNESS: A joint auto show, your Honor.

10 THE COURT: At Earl's Court; is that right?

11 THE WITNESS: At Earl's Court. Where all the
12 industry meet.

13 Q Who went with you to London?

14 A My wife.

15 Q Just your wife?

16 A Just my wife.

17 Q Do you know Mr. Roy Alpert?

18 A I sure do.

19 Q Who is Mr. Alpert?

20 A Mr. Alpert is an old, old family friend. I know
21 him about 17 or 18 years. My wife knows him forty years.

22 Q Do you know if he was a Geon shareholder, sir?

23 MR. STRUM: At what point in time may I inquire?

24 THE COURT: Yes. Did your friend, Mr. Roy Alpert,
25 ever own any stock in Geon?

1 THE WITNESS: Yes, he did. Minimal.

2 THE COURT: What?

3 THE WITNESS: He did have stock. A few hundred
4 shares.

5 THE COURT: Did you say something about minimal?

6 THE WITNESS: Yes, I believe he is not a market man.

7 THE COURT: Allright. You say he owned a few
8 hundred shares, you think.

9 THE WITNESS: Perhaps more.

10 THE COURT: Perhaps more.

11 THE WITNESS: Yes.

12 THE COURT: All right.

13 Q Mr. Neuwirth, Geon went public in 1969; is that
14 correct?

15 A Geon went public in 1969.

16 Q Was Mr. Alpert on your list of friends to --

17 A Yes, he was.

18 Q Do you know if he bought stock then?

19 A I don't know, Mr. Drake.

20 Q You did not know if he owned stock?

21 THE COURT: No, I don't know, you are mixing us up
22 here. He said he didn't know whether he bought stock at the
23 public offering. His previous testimony was that he knew
24 that he owned a few hundred shares, perhaps more. You don't
25

1 know whether he bought any at the public offering.

2 THE WITNESS: He did have some stock, yes.

3 Q Mr. Neuwirth, just again to put it in context, I
4 call attention to your testimony, this is before the Securities
5 and Exchange Commission, this is page 47, Mr. Strum, line
6 4, "Q Now, did you know whether or not prior to your having
7 dinner with Mr. Alpert, whether or not he was a shareholder
8 of Geon?
9

10 "A Yes. I knew he was a shareholder. He was on my --
11 when we went public there was such a list of friends of the
12 company and he was on that list."

13 A Yes.

14 Q So in October of 1973, my question is, did you know
15 Roy Alpert was a shareholder of Geon?

16 A He was.

17 Q All right, sir.

18 Are you also a business associate of Mr. Alpert?

19 A I am.

20 Q Were you a business associate of Mr. Alpert in October
21 of 1973?

22 A I was.

23 Q Were you a business associate of Mr. Alpert in
24 February of 1974?

25 A Yes. I am now, yes.

Q And even this day; is that right, sir?

A Yes.

Q Is Mr. Alpert a frequent dinner companion of yours?

A Yes, he is.

Q How many times --

A I would like to qualify that business associate.

I have absolutely --

Q Yes, sir, please do.

A We have an investment like I believe six, 7, 8 people in one building in Great Neck, and my total investment in this was \$18,000 four or five years ago, and this is the only business relationship I have had with Mr. Alpert.

THE COURT: All right. You are investing in a building. Where did you say? In Great Neck?

THE WITNESS: Great Neck. In Lake Success, to be precise.

THE COURT: All right.

Q How much does Mr. Alpert have invested in that?

A He invested the same amount.

MR. STRUM: I object. I don't see any relevance.

THE COURT: No, I know, but he has answered it anyway.

THE WITNESS: There is no other business connection whatsoever.

1 THE COURT: How are you doing with that building
2 out in Great Neck?
3

4 THE WITNESS: We rented it to a pretty good tenant,
5 by the name of Chase-Manhattan.

6 THE COURT: Do they pay the taxes?

7 THE WITNESS: They pay the taxes.

8 THE COURT: You are in good shape then. All right.

9 Q Again, sir, to repeat my earlier question, you say
10 you are a frequent dinner companion of Mr. Alpert --

11 THE COURT: Yes, he said he's a very old friend.
12 Let's not have any doubts. You're an old friend of his and --

13 THE WITNESS: My wife is 40 years, and I am 18,
14 17.

15 THE COURT: He dines with you, you dine with him.

16 THE WITNESS: No, we go out. We go out. His maid's
17 day out is Wednesday, so we picked Wednesday for meeting for
18 years now.

19 THE COURT: So you usually have dinner on Wednesday?

20 THE WITNESS: On Wednesdays out on the Island.

21 MR. DRAKE: We consider it important that they did
22 have dinner usually on a Wednesday.

23 THE COURT: All right.

24 Q Did you have dinner with him early in October of
25 1973, sir? Prior to your trip to London.

1 A Without looking at my diary, I would say yes.

2 Q Did you discuss with him at any time prior to your
3 trip to London the meetings and discussions that you had with
4 Burmah?
5

6 A No, sir.

7 Q You say that as if you are quite sure of it.

8 MR. STRUM: I don't perceive a pending question,
9 your Honor.

10 THE COURT: Yes, that's right. He says, no, I didn't
11 discuss Burmah with Mr. Alpert at dinner in October of 1973.

12 THE WITNESS: Right. Right. I would have said
13 Max, anyway.

14 Q Did you discuss business of Geon, sir?

15 A No, Mr. Drake. No.

16 Q Did you discuss with Mr. Alpert that Geon may
17 possibly be acquired by someone?

18 A Geon may possibly --

19 Q Be acquired by --

20 THE COURT: Somebody wanted to buy Geon.

21 A Well, it was not at a dinner, it was at the club
22 at the bar. I am not a drinker, but I probably had a 7-Up
23 or something, and I said, I am going to London, why are
24 you going to London, I am going for the auto show, and perhaps
25 looking at some people in view of a merger. Later it occurred

1 camcg
2 to me --

3 THE COURT: Wait a minute. Let's get that. That is
4 what you mentioned to Mr. Alpert at the bar at the club?

5 THE WITNESS: Yes. Not Mr. Alpert alone, a group.

6 THE COURT: A group of people. All right.

7 Q Were you talking to Mr. Alpert.

8 THE COURT: Mr. Alpert was in the group?

9 THE WITNESS: In the group.

10 THE COURT: And you were announcing your plans to go
11 to London and maybe talk about a merger; is that right?

12 THE WITNESS: I am going to look at some people
13 regarding a possible merger. Some people, your Honor,
14 interpreted that we are going to acquire somebody in England.

15 THE COURT: Well, that is possible. They might have
16 interpreted it any way.

17 THE WITNESS: That's right.

18 Q Who else was there besides Mr. Alpert?

19 A I couldn't pinpoint them. But there is a group
20 of people like in every club you have 5, 6 people, you have
21 lunch, or you have drinks, and there is a general conversa-
22 tion. Chit-chat. It certainly was not my intention to
23 divulge to these people now I am going to negotiate, or
24 look over and have conversations with Burmah.

25 THE COURT: What club was this, sir?

THE WITNESS: Fresh Meadows Country Club.

THE COURT: Where is that?

THE WITNESS: In Great Neck.

THE COURT: All right.

BY MR. DRAKE:

Q Do you remember when this conversation was, Mr. Neuwirth, the specific date?

A No. Mr. Drake, I traveled for 30 -- since before World War II. I earned my living in our line of business by traveling. Mainly Europe, Africa, and South America. I traveled thousands and thousands of hours and for me to travel was not an unusual occurrence among the people who know me.

Q Do you recall specifically what you told Mr. Alpert and the other gentlemen?

THE COURT: Well, I think he has indicated that. He has indicated he said to them that he was going to London and he was going to talk to some people, something in relation to a merger.

THE WITNESS: A possible merger.

THE COURT: Did you say anything else to them?

THE WITNESS: No.

Q Did you mention perhaps the word acquisition also?

A An acquisition?

Q Yes.

THE COURT: Did you say you were looking for an acquisition?

THE WITNESS: Look, my English is not that of a professor of English at Oxford University.

THE COURT: Neither is that of any of these people. You were doing all right.

THE WITNESS: The precision of my English is occasionally a little hazy. I didn't try to induce people to buy stock, if that is what you are --

THE COURT: No, that isn't the question. He is just trying to find out whether you said anything else to these gentlemen around the bar.

THE WITNESS: No, they were not even interested.

THE COURT: Well, I don't care what they were interested in.

THE WITNESS: No, I didn't.

THE COURT: Just all you said was London, possible merger; is that right?

THE WITNESS: Possible merger, yes.

THE COURT: Nothing else.

THE WITNESS: That's exactly it, yes.

THE COURT: Nothing else. I think with that note we will adjourn for the day and meet again at 10 o'clock

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camcg

218A

tomorrow morning.

(Time noted: 4:30 P. M.)

(Adjourned to June 19, 1974)

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